

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

CASE NUMBER: 1:08-CV-00737

JUDGE SUSAN J. DLOTT

SAMUEL A. CAMPBELL

AND

CHELSIE GEMPERLINE

PLAINTIFFS

vs.

THE CITY OF SPRINGBORO, OHIO, ET AL.

DEFENDANTS

* * * * *

DEPONENT:

KENNETH R. WALLENTINE

DATE:

SEPTEMBER 16, 2013

* * * * *

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<div>Page 3</div> <div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> <div> <div>The deposition of Kenneth R. Wallentine, taken for the purpose of discovery and/or use as evidence in the within action, pursuant to notice, heretofore taken at the office of Rendigs, Fry, Kiely & Dennis, LLP, 600 Vine Street, Suite 2650, Cincinnati, Ohio, on September 16, 2013, at 9:30 a.m., upon oral examination, and to be used in accordance with the Ohio Rules of Civil Procedure.</div> <div>*****</div> <div>APPEARANCES</div> <div>REPRESENTING THE PLAINTIFFS:</div> <div>DOUGLAS D. BRANNON, ESQ.</div> <div>REPRESENTING THE DEFENDANTS:</div> <div>WILSON G. WEISENFELDER, JR. ESQ.</div> <div>*****</div> </div>	<div>Page 5</div> <div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> <div> <div>the Utah attorney general.</div> <div>Q. And chief law enforcement officer for the Utah attorney general, please explain that position to me. What does that entail?</div> <div>A. The office of the attorney general houses the state's investigative division. And I oversee all of the various investigative bureaus within the office of the attorney general.</div> <div>Q. Okay. And is that to say it's the police department for the police departments? Is that -- how would you characterize that?</div> <div>A. I wouldn't use that characterization, but one of the roles of the investigative division is to investigate allegations of police misconduct in certain circumstances.</div> <div>Q. Okay. And give me some examples of what those circumstances would be.</div> <div>A. It would be common for agents under my supervision to investigate officer-involved shootings, other significant uses of force, allegations of serious misconduct that could rise to the level of criminal culpability by law enforcement officers. Allegations of corruption, again, that would potentially be criminal. And allegations of violations of civil rights that could be</div> </div>

<p style="text-align: right;">Page 6</p> <p>1 prosecutable under either state or federal civil 2 rights statutes. 3 Q. And the purpose of conducting these 4 investigations on behalf of the Utah Department of 5 Justice is what? 6 A. The office of the attorney general. The 7 purpose is -- the end goal is to determine whether 8 there is a basis for charging the officers with 9 crimes or not. 10 Q. It has nothing to do with the evaluation 11 for civil liability purposes, correct? 12 A. Not correct. 13 Q. Okay. Make me understand then. 14 A. The office of the attorney general, 15 obviously, is counsel to state agencies. And so if 16 a state-employed law enforcement officer is involved 17 in a critical incident that falls under one of the 18 categories that I've just described, and there is 19 the potential or a reasonable foreseeability of a 20 civil action against the state. As opposed to one 21 of its political subdivisions, our investigators may 22 be called on to conduct an investigation to assist 23 the attorneys who would defend, or who, in some 24 cases, are defending claims against the state. 25 Q. Is it ever in support of the plaintiffs,</p>	<p style="text-align: right;">Page 8</p> <p>1 position, or the position of chief of that agency 2 since 2005? 3 A. Yes. 4 Q. Where were you prior to that? 5 A. Prior to that I served as the 6 investigation bureau chief at the Utah Department of 7 Public Safety Peace Officer Standards and Training 8 Division. 9 Q. Commonly referred to as POST? 10 A. Correct. 11 Q. Okay. And what did you do there? 12 A. A moment ago I referred to sending other 13 types of investigations to an allied state agency. 14 And that's the agency to which I referred. So that 15 position I oversaw the investigation of law 16 enforcement officers, certification and licensing in 17 other words. Allegations of misconduct that could 18 impact the person's ability to be licensed as a 19 peace officer or corrections officer or a special 20 functions officer within the State of Utah. 21 Q. Okay. And can you give me some examples 22 of what would cause an officer to lose his 23 credentials according to POST in the context of an 24 excessive use of force claim? How would that work 25 within the agency?</p>
<p style="text-align: right;">Page 7</p> <p>1 meaning the injured party? 2 A. In civil rights cases, yes. 3 Q. And how does that work? 4 A. The person petitions the office of the 5 attorney general for a civil rights investigation 6 that most typically would happen through their 7 attorneys. 8 Q. Meaning your office would receive a letter 9 from a plaintiff's attorney stating legally that 10 civil rights violations have occurred by Officer 11 Jones from, pick your town, any town within the 12 state, and you, at that point, investigate that? 13 A. We could. It would depend. If it 14 appeared that the allegations would not lead to 15 criminal charges, we would refer that complaint to a 16 sister agency that investigates law enforcement 17 conduct and alleged misconduct more broadly. 18 Q. Okay. So, if it does not contain a 19 criminal element on behalf of the officer, you then 20 refer that investigation elsewhere, if I understand? 21 A. Very likely we would. 22 Q. Okay. And how long have you been at that 23 position? 24 A. Since 2005. 25 Q. And have you always been in the chief</p>	<p style="text-align: right;">Page 9</p> <p>1 A. Well, there are a couple of -- there are a 2 couple of different avenues that that kind of 3 complaint might come to POST. It might be one 4 referred from the office of the attorney general. 5 It might be -- and probably is fairly commonly a 6 complaint that would be referred from the officer's 7 own employer. There's a state statute that requires 8 a chief of police or a sheriff or a chief executive 9 of a law enforcement agency to, under penalty of 10 criminal law, report any misconduct, including 11 excessive force, that might impact the officer's 12 certification. So that's one source. And another 13 source would be an aggrieved citizen petitioning 14 either the POST, itself, or the council on peace 15 officer standards and training that oversees the 16 operations of POST. 17 Q. And how long were you there? 18 A. From some time in 2000 until I left to 19 become chief at the attorney general's office. 20 Q. 2000 to 2005? 21 A. Yes. 22 Q. And prior to that, where were you? 23 A. There's a period around late 1999 to 2000, 24 2001 -- let's see, when I worked both for the 25 Department of Public Safety, POST, as a consultant,</p>

<p style="text-align: right;">Page 10</p> <p>1 as I was transitioning into a full-time role, and 2 part-time for the Uintah County attorney's office as 3 the chief deputy county attorney. 4 And prior to that transition period, I had 5 worked since 1994 for the Uintah, that's 6 U-I-N-T-A-H, County attorney's office most of that 7 time serving as chief deputy. And I had some other 8 employment during that period, as well. 9 Q. Okay. Let's start with the work that you 10 did for POST as a consultant. What would you 11 consult with them on, or what would they retain you 12 as a consultant for? 13 A. I was working on the curriculum that was 14 presented to peace officers. 15 Q. Okay. And by curriculum, what are we 16 talking about, the training courses, you would 17 prepare course outlines that the instructors would 18 teach off of, or what? 19 A. I prepared some directly, but edited and 20 evaluated other persons' proposed contributions to 21 curriculum. 22 Q. And in what subject areas? 23 A. Fairly broadly across the board, although 24 my particular areas of emphasis were the legal 25 subjects, as well as use of force, subjects related</p>	<p style="text-align: right;">Page 12</p> <p>1 perhaps 25,000 people at the time, it's bigger now, 2 and quite large in space. It's the size of Delaware 3 or Rhode Island. 4 Q. A fairly rural area? 5 A. It's a fairly rural area with vast tracts 6 of forest land and oil fields and other mineral 7 deposits. 8 Q. And as far as the criminal element that 9 you are dealing with in this area, not a lot of 10 violent crime I would take it? Or given the 11 population size and the rural nature, not a high 12 drug trafficking, big city type problems? It's -- 13 go ahead and describe that for me, if you would. 14 A. I don't recall the year, but there was one 15 year when the county led the nation in number of per 16 capita illegal methamphetamine laboratories. And 17 all of the violent crime associated with that. It 18 was a county of significant violent crime. I 19 mentioned that it was a county of mineral deposits 20 and oil fields. And it was one -- is today one 21 where the population is in constant flux. 22 You will find high school dropouts that 23 are millionaires, because of oil field companies 24 they've started. Come back two years later, and 25 they'll be meth pushers with no appreciable assets</p>
<p style="text-align: right;">Page 11</p> <p>1 to civil rights. Almost anything that was even 2 tangentially connected to the legal subjects would 3 be under my purview. 4 Q. And what would that include, mainly search 5 and seizure or what? Give me an idea of what's 6 under that gamut. 7 A. Search, seizure, arrest, detention, 8 interview, interrogation, protection of civil 9 rights, use of force, reasonable force, ancillary 10 force tools. That's a pretty good umbrella. 11 Q. Okay. And then when you worked part-time 12 for the Uintah? 13 A. Uintah. It's an Indian tribe. 14 Q. I'll never get that right, so -- 15 A. That's all right, most people don't. 16 Q. -- bear with me. All right. Tell me what 17 you did for the attorney's office there. 18 A. As chief deputy I both prosecuted and then 19 assisted in managing the law office. 20 Q. And how large is Uintah? 21 A. Uintah. 22 Q. Uintah. 23 A. It means snow up your crotch, I'm told. I 24 don't know whether that's true or not. Uintah 25 County is a relatively small county in population of</p>	<p style="text-align: right;">Page 13</p> <p>1 to show for their period of financial success. A 2 lot of roughnecks. A lot of oil field people. 3 Q. Okay. And you said -- prior to that, what 4 did you do? 5 A. I spent a couple of years in private 6 practice as an attorney with a firm in Salt Lake 7 City. I spent a couple of years in two different 8 judicial clerkships. 9 Q. And when you were in private practice as 10 an attorney, what years approximately was that? 11 A. '92 to '94. 12 Q. In what areas of law did you practice in, 13 mainly? 14 A. Primarily in employment law and civil 15 rights. With some work in the oil industry, which I 16 suspect wouldn't interest you at all. 17 Q. I'm sure it helped pay the bills. 18 A. Oh, my, that, it did. 19 Q. I think I'm missing a time period gap 20 here, '94 to '99. 21 A. That's when I was at Uintah County. 22 Q. Okay. 23 A. I didn't actually leave Uintah County 24 until 2001 or 2002. As I was transitioning out of 25 the county, one of my friends who was a police chief</p>

1 was murdered by a drug dealer. There's no one in
2 the area who had ever prosecuted a homicide, let
3 alone a death penalty case. So I remained as a
4 consultant of the county for long enough to
5 prosecute that case to its end, which required
6 almost two years.

7 Q. Okay.

8 A. So that's the overlap there.

9 Q. And prior to your private practice from
10 '92 to '94?

11 A. I clerked for the chief judge of the Fifth
12 Circuit Court of Appeals in Houston, Texas. Well,
13 the court's in New Orleans, but I was in Houston.
14 Then I clerked for the -- I don't believe he is now,
15 but the presiding judge at the Utah Court of Appeals
16 in Salt Lake City, Utah.

17 Q. Prior to that?

18 A. Prior to that I spent three years in law
19 school, and worked part-time. I started law school
20 in '87.

21 Q. Where did you go to law school at?

22 A. J. Reuben Clark at Brigham Young
23 University.

24 Q. Any employment prior to law school?

25 A. Yes.

1 Q. Where was that at?

2 A. Provo City Police Department.

3 Q. And what years were you with the Provo
4 City Police Department?

5 A. 1982 to 1987, the week I started law
6 school.

7 Q. And tell me what you did career-wise, as
8 far as the Provo City Police Department. Where you
9 started out as a patrol officer, and tell me about
10 your career, what you did for them.

11 A. Started as a patrol officer. I spent the
12 majority of my time in patrol and a portion of my
13 time in investigations working burglary and property
14 crimes. Then a brief period of time in special
15 investigations, which was primarily vice and
16 narcotics, or vice and illegal drugs.

17 Q. Did you ever work as a K9 officer at the
18 Provo City Police Department?

19 A. I worked as an agitator, not a K9
20 officer.

21 Q. Tell me what an agitator would do.

22 A. An agitator is sometimes known by the term
23 of decoy. It's the person who would assist in
24 training the dogs. It would be the person who hides
25 and is typically bitten, or runs and is typically

1 bitten on every case.

2 Q. So you were the stereotypical guy in the
3 bite suit running away during training sessions?

4 A. Yes.

5 Q. Okay. Prior to the Provo City Police
6 Department? Or are we back in high school?

7 A. Not quite. I worked a brief period as a
8 jailer before -- and dispatcher, and worked in the
9 '70s, late '70s, worked as a security officer at the
10 local medical center complex.

11 Q. Okay. Now, what I want to go through is
12 your -- with your employment, your experience in
13 working with training, police K9 -- K9 teams through
14 working as a K9 officer. I think that's going to
15 start with the Provo City Police Department,
16 correct?

17 A. Correct.

18 Q. Okay.

19 A. Well, not as a K9 officer, no.

20 Q. Okay. You have never worked as a K9
21 officer?

22 A. I have. But not at Provo City Police
23 Department. At Provo all I did was work as a decoy
24 or an agitator.

25 Q. Okay. And how much time did you spend

1 doing that, and during what years?

2 A. '82, '83, and that was not a -- that was
3 not by any stretch a full-time assignment. That was
4 an ancillary -- I wouldn't even say duty, because
5 it's something that I did not have to do, wasn't
6 required to do. The dog handler and I became
7 friends. It was an area that interested me.

8 Q. Okay. And you were the young guy on the
9 police department at that point?

10 A. Yes.

11 Q. Good bait?

12 A. And in sufficient physical condition that
13 I could run from a dog while wearing a heavy suit.

14 Q. Okay.

15 A. And didn't mind very much being bitten.

16 Q. And approximately how often would you
17 engage in helping the K9 officer conduct his
18 training during that period of time?

19 A. Oh, it would vary, but an average would be
20 monthly. There was a -- Provo City -- well, it
21 still is a relatively small department. I think
22 there's 110, 115 officers. So, as is fairly common
23 to the dog world, there were officers from different
24 agencies who would come together and take turns
25 training.

<p style="text-align: right;">Page 18</p> <p>1 Q. And you'd participate in that maybe once a</p> <p>2 month?</p> <p>3 A. Maybe once a month.</p> <p>4 Q. Okay. That takes you through 1987. Tell</p> <p>5 me your next job or foray into police K9s then.</p> <p>6 A. 1994, when I went to Uintah County after</p> <p>7 being there a brief period of time. I had</p> <p>8 maintained my law enforcement license all through</p> <p>9 law school, and was interested in keeping my law</p> <p>10 enforcement licensure active. One of the</p> <p>11 opportunities that came to me -- well, really the</p> <p>12 only opportunity that came to me to do that was to</p> <p>13 become a reserve deputy sheriff with the Uintah</p> <p>14 County Sheriff's Office. I did so in 1994. There</p> <p>15 were some discussions about expanding the K9 unit</p> <p>16 there from one dog to two dogs. And I was afforded</p> <p>17 the opportunity to go to handler training and</p> <p>18 ultimately acquire a police service dog.</p> <p>19 Q. Okay. So as a reserve deputy sheriff in</p> <p>20 Uintah --</p> <p>21 A. Uintah.</p> <p>22 Q. Uintah. I told you I'm not going to get</p> <p>23 that right this whole time.</p> <p>24 MR. WEISENFELDER: Can we spell that?</p> <p>25 THE WITNESS: U-I-N-T-A-H.</p>	<p style="text-align: right;">Page 20</p> <p>1 So we started a drug court. And the drug</p> <p>2 court was unique in that it, rather than using</p> <p>3 social workers to monitor drug court participants,</p> <p>4 we used law enforcement officers. And we were</p> <p>5 unique in one other respect, and that is that part</p> <p>6 of the monitoring, it involved using police service</p> <p>7 dogs to assist in the inspection of homes, work</p> <p>8 places and vehicles under the control of persons who</p> <p>9 were participants in drug court. So during that</p> <p>10 period of time --</p> <p>11 Q. Meaning under the control of participants</p> <p>12 that were in drug court, meaning that participants</p> <p>13 in drug court would --</p> <p>14 A. They would sign -- drug court was a</p> <p>15 diversionary process. And so they would agree to</p> <p>16 usually a three-year period of intense supervision</p> <p>17 coupled with pretty intense participation in</p> <p>18 twelve-step programs and formal drug treatment, and</p> <p>19 rigorous testing, urine testing, coupled with</p> <p>20 inspection of their homes, places of employment and</p> <p>21 vehicles for the presence of controlled substances.</p> <p>22 Q. Okay.</p> <p>23 A. So they would sign a -- essentially they</p> <p>24 would agree to this --</p> <p>25 Q. The search.</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. WEISENFELDER: Okay. Maybe that will</p> <p>2 help.</p> <p>3 MR. BRANNON: Still not going to help.</p> <p>4 BY MR. BRANNON:</p> <p>5 Q. And as far as the time that you spent as a</p> <p>6 reserve deputy sheriff, how much time would you work</p> <p>7 on the street patrolling and that sort of thing?</p> <p>8 A. Typically -- well, the minimum was 16</p> <p>9 hours a month. And many months I worked only the</p> <p>10 minimum. Others, particularly during -- there was a</p> <p>11 time when we had a unique project within the</p> <p>12 sheriff's office where my time commitment was much</p> <p>13 greater.</p> <p>14 Q. And what was that unique project?</p> <p>15 A. The -- Uintah County started, we think the</p> <p>16 nation's first, if not the first certainly one of</p> <p>17 the first, drug courts in a rural environment. The</p> <p>18 county had a distinctive attribute of being one of</p> <p>19 the first in the intermountain west to have just a</p> <p>20 raging methamphetamine problem, and became somewhat</p> <p>21 of a center for manufacturing methamphetamine in the</p> <p>22 intermountain west. Largely due to the oil workers,</p> <p>23 and the county is surrounded by other large oil</p> <p>24 working counties in Colorado and Wyoming, two states</p> <p>25 that it borders.</p>	<p style="text-align: right;">Page 21</p> <p>1 A. -- fairly onerous search provision in</p> <p>2 exchange, one would hope, for not ending up with a</p> <p>3 felony conviction.</p> <p>4 Q. And with that, you then did -- took the</p> <p>5 dog in the homes, did drug searches?</p> <p>6 A. Homes, cars, places of business.</p> <p>7 Q. Okay. Tell me about the training that you</p> <p>8 received, K9 training, where you were trained, how</p> <p>9 much time you spent training?</p> <p>10 A. In the initial training or initial and</p> <p>11 maintenance training?</p> <p>12 Q. The initial training.</p> <p>13 A. My initial training was through an entity</p> <p>14 known as the International Police K9 Conference.</p> <p>15 It's a group somewhat shrunk now, but back then was</p> <p>16 a fairly large group based out of Delta, British</p> <p>17 Columbia and Canada. That was in 2004, 2005. I</p> <p>18 believe that --</p> <p>19 Q. Was that where you went to get your dog</p> <p>20 and you trained with the dog there or --</p> <p>21 A. My initial training before I got my dog,</p> <p>22 yes, although the school, itself, was conducted in</p> <p>23 Anaheim, California, and I'm trying to remember, I</p> <p>24 think that it was -- I think that it was actually</p> <p>25 2005. It might even have been early 2006 by the</p>

1 time I got the dog and then went through additional
2 training with -- paired up with that dog.

3 Q. Okay. So is the International Police K9
4 Conference, was that just a conference in Delta,
5 Canada, Delta, British Columbia, Canada?

6 A. No. It was the basic handler training
7 school. It was actually -- they're headquartered
8 out of Canada, but they would travel to different
9 locations in the United States once a year to do the
10 school, or maybe twice a year. And the one I
11 attended, the basic handler course, was in Anaheim,
12 California at the Anaheim Police Department.

13 Q. Okay. So I'm still up here in Delta,
14 Canada. How much --

15 A. I never went to Canada.

16 Q. You never went to Canada.

17 A. I did, but not for this particular
18 training.

19 Q. Okay.

20 A. They are headquartered out of Canada.
21 They're a bunch of Canadians.

22 Q. Okay. So --

23 A. But they would train in the United States.

24 Q. The first time that you had any formal K9
25 training then was in Anaheim, California?

1 A. Classroom and fieldwork.

2 Q. And fieldwork. Would that be a K9 handler
3 was demonstrating the dog to a group of people?

4 A. Or there was another K9 that was there,
5 that dog was actually assigned to someone else in
6 the Uintah County Sheriff's Office that I was with,
7 and I was working with that particular dog.

8 Q. So, you took another dog from your
9 sheriff's office up to Anaheim, California with you?

10 A. I went with the other handler and his dog,
11 yes, and worked with his dog.

12 Q. So were you in an assisting capacity then,
13 is that --

14 A. Training capacity.

15 Q. Training capacity. And what were you
16 training for?

17 A. For the intent and hope that we'd be able
18 to acquire another police service dog for the
19 sheriff's office. And that the sheriff would see
20 that I'd undertaken the training and was qualified
21 and ready to receive a dog, and would receive a dog.

22 Q. Okay. Was that true for the second
23 six-day session as well?

24 A. Yeah.

25 Q. Was this a maintenance training that the

1 A. Correct, 2004.

2 Q. And who was that with?

3 A. Excuse me, 1994. That -- the entity that
4 put on that training was the International Police K9
5 Conference.

6 Q. That was the entity, and how --

7 A. And it may be called the -- it may have
8 been called the International Police K9 Academy
9 then. I'm not certain.

10 Q. How long were you there in Anaheim,
11 California, and what did this training consist of?

12 A. The first block in Anaheim was six days,
13 then the second block was in another city, was also
14 six days. And it consisted of -- the day would
15 start at 6:00, go roughly until 11:00 at night. The
16 first two blocks had to do with patrol work. Some
17 people would refer to that as handler protection or
18 bite work, building searches, article searches,
19 evidence searches. It would be fair to say
20 non-narcotic training for a police service dog.

21 Q. And when you went to Anaheim, California
22 in 1994, is that when you received your dog?

23 A. No.

24 Q. Okay. So was this just classroom
25 training?

1 other K9 handler went for that you accompanied him
2 on?

3 A. No. His purpose there was primarily to
4 facilitate my training, and also he participated
5 with that group. I think he was -- I don't know,
6 but I believe he was paid as an instructor there.

7 Q. His dog was already trained and, I
8 presume, certified at that time with the state?

9 A. Trained, certified, had been working for
10 some period of time by that point.

11 Q. Okay. When was the next time that you had
12 any K9 experience, interaction, that sort of thing?

13 A. Well, in terms of formal training or
14 interaction?

15 Q. Formal training.

16 A. I would regularly work with -- work with a
17 handler at our sheriff's office. That was the
18 majority focus of what I did for my reserve hours.

19 Q. Let me backtrack, when did you become a K9
20 officer and receive your dog and become certified?

21 A. I believe that was late 2005, and it might
22 have been 2006. I'm sorry. I'm still a decade off.
23 I don't know why that is. Yesterday I wrote 9/15/57
24 on the security logs at the airport.

25 Q. So are we talking 1995 or 1996?

1 A. Yes. We're definitely not talking 1957.

2 Q. So between that initial course in Anaheim,
3 California, what was the next formal training that
4 you received then?

5 A. The next formal training, same group,
6 second block. I am not certain, but I believe that
7 the location then was Ventura County Sheriff's
8 Office.

9 Q. And that was the second six-day block
10 then?

11 A. Yes. I don't recall whether that was
12 later in 2004, or in 2005 -- 1994 and 1995.

13 Q. Okay. And was this the same thing where
14 you went with the existing K9 handler as a
15 trainee/assistant --

16 A. Yes.

17 Q. -- something like that?

18 A. A grunt. A trainee.

19 Q. Okay.

20 A. Once again, the new guy, as you put it.

21 Q. After that second period, when's the next
22 formal -- or tell me what you did at that second
23 six-day period? What was the training curriculum?

24 A. Building on the first. Again, this was
25 only patrol work to the point that I was able to

1 well?

2 A. I don't believe that they breed -- bred
3 dogs then. I believe that they imported -- I'll do
4 my best, I think it's Schutzhund,
5 S-C-H-U-T-Z-H-U-N-D, titled dogs from Europe and
6 then trained them for police service in the United
7 States.

8 Q. When they received them were they started
9 dogs --

10 A. Yes.

11 Q. -- meaning they already received their
12 basic training overseas, and they were being brought
13 into this country for finishing work and being
14 assigned with officers?

15 A. Well, I suspect, based on who your K9
16 expert is, that you're familiar with how that
17 process unfolds, in terms of Schutzhund training.
18 So, your term of being started, I understand it to
19 mean that they'd had basic obedience training. And
20 that -- the skills that police service dogs then
21 will be expected to demonstrate. And if that's what
22 you mean, then the answer is yes.

23 Q. Okay. And was -- tell me about the
24 initial training then that you received in New
25 London, Connecticut.

1 demonstrate my proficiency as a patrol dog handler.
2 That wasn't my initial objective and hope. I had
3 wanted to follow on and get certified to get a dog
4 and do narcotics work, but that was the first step
5 to take.

6 Q. Okay. And as far as this training that
7 you were participating in, would both -- would you
8 be giving the commands to the dog?

9 A. Yes.

10 Q. Okay. As well as the K9 officer whose dog
11 it was?

12 A. He wasn't -- no, he was in an instructor
13 role. In that second block, I know he was a paid
14 instructor for them.

15 Q. Okay. When is the next time that you
16 received any formal K9 training?

17 A. It was when I got my dog and we went to
18 New London, Connecticut. And I believe that was
19 late 2005 -- or excuse me, 1995 or 1996.

20 Q. And who was the person that you --
21 kennel, kennel or group, that you got this?

22 A. Same group. And we bought the dog from
23 this group, The International Police K9 Conference
24 Academy.

25 Q. Okay. And so they're breeders of dogs, as

1 A. At that point, my training transitioned,
2 and when I picked up the dog we started a course of
3 training in substance odor detection, drug dog work.

4 Q. Was this a dog trained as a drug dog only,
5 or was it known as a dual purpose dog? Tell me what
6 type of a dog it was.

7 A. A dual purpose dog.

8 Q. Okay. And were you at a kennel or was
9 this an International Police K9 Conference facility?

10 A. It was the New London Police Department
11 facility.

12 Q. Okay. Tell me about how much time you
13 spent in Connecticut then for this program.

14 A. Six days.

15 Q. And did the dog come home with you to Utah
16 at that point?

17 A. Yes.

18 Q. Okay. At that time back in 1995, '96, was
19 that the basic training -- did that fulfill the
20 basic training requirements for the State of Utah to
21 become a certified unit?

22 A. Well, that coupled with taking the exam.

23 Q. With the state?

24 A. Yes.

25 Q. Tell me about the examination process that

<p style="text-align: right;">Page 30</p> <p>1 you went through with the State of Utah to become a 2 certified K9 handler. 3 A. It's -- the examination process was then, 4 and I believe today, is fairly similar to the 5 certification trials or testing that are 6 administered by most K9 organizations, consisting of 7 basic obedience. One would certify a dog in -- you 8 could certify in both areas, didn't need to, but for 9 the patrol work, basic obedience, article searches, 10 building search and apprehension, call off and 11 retrieval. A narcotics component then, and I 12 believe now, consisted of, I'd say, five 13 different -- five different exercises involving the 14 odors of four categories or families of controlled 15 substances -- 16 Q. Okay. 17 A. -- in different settings. 18 Q. And was your particular dog -- what was 19 his name? 20 A. Monty. 21 Q. Monty. Was Monty certified in both patrol 22 and narcotics with the State of Utah? 23 A. Yes. 24 Q. And so he was past the requirements for 25 basic obedience, article searches, building</p>	<p style="text-align: right;">Page 32</p> <p>1 fluctuated up. 2 Q. You were never full-time though? 3 A. Not as a police officer, no. 4 Q. Okay. 5 A. Not during that period of time. 6 Q. So, in any capacity that you had being a 7 K9 handler, it was part-time -- part-time, correct? 8 A. As a handler? 9 Q. Yes. 10 A. Correct. 11 Q. Okay. As far as when you were utilizing 12 that dog, how many bites or how many times did Monty 13 bite a suspect under your handling during that 1995 14 to 2000 time frame? 15 A. I'd have to go back and peruse his 16 records, but in -- Monty never had a field 17 deployment bite. He had a number of trial bites, 18 but I don't remember how many. I would say 19 somewhere in the range of less than a dozen. 20 Q. Okay. And when you say field trial bites, 21 would that be training that he was doing, or 22 demonstrations that you'd be conducting with the 23 dog? 24 A. Outside of training. No, I'm talking 25 about certification and competition.</p>
<p style="text-align: right;">Page 31</p> <p>1 searches, all of those are encompassed over that 2 gamut? 3 A. Correct. 4 Q. Okay. 5 A. And narcotics, the odors. 6 Q. Okay. Now, you were still with the 7 reserve sheriff unit, correct? 8 A. Correct. 9 Q. How long did you work active duty in -- 10 with Monty, how many years? 11 A. From when I first acquired him, and again, 12 I believe that was '95 or early 1996, until about 13 the time -- about the time that I began working with 14 the Utah Department of Public Safety full-time. So 15 2000, late 2000, early 2001, and he went to another 16 handler. 17 Q. Okay. Went to another handler with the 18 county sheriff's department then? 19 A. Yes. 20 Q. And in that 1995 to 2000 time frame, tell 21 me about how many hours you were working, 22 approximately? You said reserve capacity. Was 23 that, in that time frame, about 16 hours per month? 24 A. A minimum of 16 hours per month. It could 25 fluctuate. But if it fluctuated, it always</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Okay. So a competition field trial? 2 A. I'm sorry, I used the word trial, which to 3 you may mean something different. In this context, 4 trial -- I refer to trial as, for example, state 5 certification test, a United States Police K9 6 Association certification test, or one of the other 7 entities of which we would certify that dog as a 8 certification test. 9 Q. Okay. And that dog, if I'm understanding 10 you correctly, had about 12 -- 11 A. 12 or fewer -- 12 Q. -- field trial bites? 13 A. Correct. 14 Q. And I use -- just field trials with bird 15 dogs, because in hunting and that sort of thing, 16 which, you know, a competition where everybody goes 17 out and -- 18 A. Right. I had bird dogs, that's a somewhat 19 different world. 20 Q. Okay. And so these bites would have 21 occurred with any state testing or something of that 22 nature, correct? 23 A. State or United States Police K9 24 Association, which is not a Utah state-sanctioned 25 organization, or the California Narcotic Detector</p>

<p style="text-align: right;">Page 34</p> <p>1 Dogs Association.</p> <p>2 Q. And these bites would have occurred in a</p> <p>3 controlled environment then, not in the normal</p> <p>4 course of patrol work, correct?</p> <p>5 A. Somewhat controlled, yes.</p> <p>6 Q. But your dog, during the 1995 to 2000 time</p> <p>7 frame, if I'm understanding you correctly, never bit</p> <p>8 a suspect?</p> <p>9 A. Not under my control, no.</p> <p>10 Q. The training -- or let me ask you this,</p> <p>11 Monty, in the training that you received, was he</p> <p>12 trained as a bite-and-hold dog or bark-and-hold dog?</p> <p>13 A. As I understand the terms, as I use the</p> <p>14 terms, he was trained as a bite-and-hold dog.</p> <p>15 Q. And I'm going to want you to go ahead and</p> <p>16 tell me what you think those terms mean,</p> <p>17 bite-and-hold and bark-and-hold.</p> <p>18 A. Fair enough. Let me start with</p> <p>19 bark-and-hold, because that's perhaps the term that</p> <p>20 has the most variance. And I think most people in</p> <p>21 the K9 world would tell you that's the term that's</p> <p>22 most loosely applied. But a bark-and-hold dog,</p> <p>23 which is also sometimes referred to as a</p> <p>24 guard-and-bark or a circle-and-bark dog, is one that</p> <p>25 is trained in the course of a search for a person,</p>	<p style="text-align: right;">Page 36</p> <p>1 trained to, again if possible, circle. Most dogs</p> <p>2 are trained to circle, not all. It depends on who's</p> <p>3 trained the dog. And bark to alert the handler and</p> <p>4 other officers to the presence of that particular</p> <p>5 person.</p> <p>6 Q. Okay. And let me ask you this, you said</p> <p>7 building searches. If the dog is doing a search off</p> <p>8 lead in an open field, is that bark-and-hold dog</p> <p>9 supposed to perform the same way, where he barks</p> <p>10 unless furtive movements are made by the suspect?</p> <p>11 A. Yes. For aggressive movements or</p> <p>12 movements to escape.</p> <p>13 Q. Okay. And as far as a bark-and-hold dog</p> <p>14 when we're talking about a search and a track, is</p> <p>15 there any difference between those two terms if</p> <p>16 you're conducting a search with a K9 or doing a</p> <p>17 track with the K9?</p> <p>18 A. There could be. I'm not sure what you</p> <p>19 mean by a search when I'm -- when I used the term</p> <p>20 search, I wasn't particularly making a distinction,</p> <p>21 but there can be a difference between a search and a</p> <p>22 track.</p> <p>23 Q. Okay. Tell me the difference as you</p> <p>24 understand it. Because throughout this case I think</p> <p>25 that these terms have been used interchangeably.</p>
<p style="text-align: right;">Page 35</p> <p>1 most typically a building search, that when -- at</p> <p>2 the end of the search, that is when the dog believes</p> <p>3 the dog has located the person that the dog has been</p> <p>4 sent to locate. If the person remains still and</p> <p>5 does not engage in any kind of aggressive move</p> <p>6 toward the dog, or an attempt to escape, then the</p> <p>7 dog will bark to signal the presence of that person,</p> <p>8 but will not engage the person with a bite. Some</p> <p>9 dogs, depending on the circumstances, will navigate</p> <p>10 around, if possible, the person. Hence, some people</p> <p>11 use the term circle-and-bark or bark-and-circle.</p> <p>12 Q. Okay. And before you get onto</p> <p>13 bite-and-hold, let me ask you a few questions with</p> <p>14 that --</p> <p>15 A. Yes, sir.</p> <p>16 Q. -- because you sort of qualified your</p> <p>17 answer with generally in terms of a building search</p> <p>18 what a bark-and-hold dog is supposed to do. In</p> <p>19 terms of doing a track on a lead, what is your</p> <p>20 understanding of what a bark-and-hold dog is</p> <p>21 supposed to do?</p> <p>22 A. If the dog is tracking on a lead out in</p> <p>23 the open in the field and locates the person, and</p> <p>24 the person makes no move to escape, no move that the</p> <p>25 dog interprets as aggressive, then the dog is</p>	<p style="text-align: right;">Page 37</p> <p>1 And tell me if you think they're interchangeable, or</p> <p>2 what the difference may mean.</p> <p>3 A. I think that they can be interchangeable</p> <p>4 if one understands the circumstances. But a track,</p> <p>5 when a dog is actually tracking, a dog is following</p> <p>6 the scent of disturbed, typically vegetation, plant</p> <p>7 material, particularly in a field. In an urban</p> <p>8 environment it can be just a disturbance of the</p> <p>9 environment, which has a fresh scent transfer. The</p> <p>10 person who has moved through the environment and</p> <p>11 broken the vegetation or brushed up against the</p> <p>12 vegetation has left fresh scent. The dog is</p> <p>13 following that track. So when you say tracking, the</p> <p>14 dog is following a defined pathway of disturbed</p> <p>15 material. The dog is doing -- I'm sorry, did you</p> <p>16 ask me to distinguish between search and track --</p> <p>17 Q. Between track and search, yeah.</p> <p>18 A. Okay. If the dog is doing a search, that</p> <p>19 may not necessarily implicate a track. It may be</p> <p>20 that you're going into -- you're taking the dog into</p> <p>21 an area and directing the dog to find any person</p> <p>22 there, human -- find human scent, or it may be that</p> <p>23 the dog's been given a scent, or has picked up a</p> <p>24 scent somewhere else, but is taken into an area</p> <p>25 where a track is not readily available, and the dog</p>

<p style="text-align: right;">Page 38</p> <p>1 is asked to search for that person. And during that</p> <p>2 search activity there may be a transition from air</p> <p>3 scenting or a general search behavior to track. And</p> <p>4 it may actually transition back, depending on, you</p> <p>5 know, what happens, for example.</p> <p>6 Q. Okay. You used another term in there</p> <p>7 that's come up in this case, air scenting. What is</p> <p>8 your understanding of that term as it relates to dog</p> <p>9 behavior?</p> <p>10 A. When a dog is air scenting, the dog is</p> <p>11 transitioned away from tracking. That is the dog is</p> <p>12 no longer taking odor in, smelling the ground, the</p> <p>13 disturbed vegetation, not necessarily just the</p> <p>14 ground. It could be vegetative material, bushes and</p> <p>15 so forth. And is now sniffing the air to try and</p> <p>16 find scent molecules to try and find the scent</p> <p>17 signature of the person the dog is searching for.</p> <p>18 Q. Is that something that a dog typically</p> <p>19 does when it is close to its -- I won't use the term</p> <p>20 prey, or subject matter that it's looking for?</p> <p>21 A. It could be.</p> <p>22 Q. Okay. What, for example, when a dog --</p> <p>23 you know, you worked as a dog handler, when Monty</p> <p>24 would be getting air scenting during a search, what</p> <p>25 would that indicate to you as a handler?</p>	<p style="text-align: right;">Page 40</p> <p>1 he gets real birdy, he gets excited and then locks</p> <p>2 up on point. What is the equivalent of getting</p> <p>3 birdy for a K9?</p> <p>4 A. You know, and I've actually heard somebody</p> <p>5 use that term with a police service dog, saying the</p> <p>6 dog was getting birdy. And if he -- I had a</p> <p>7 chocolate lab. If you've never had a bird dog you</p> <p>8 don't know what that term, getting birdy, means.</p> <p>9 But the equivalent would be to see -- see behavior</p> <p>10 that some handlers would describe as being in the</p> <p>11 cone or on scent. In the cone being fairly common,</p> <p>12 meaning that the dog is in what is often referred to</p> <p>13 as a scent cone. The dog is working toward the</p> <p>14 source of the odor, the source of the scent of the</p> <p>15 target of the search.</p> <p>16 Q. With a bark-and-hold dog, if there's no</p> <p>17 furtive movement or gesture made by the suspect, and</p> <p>18 that dog is properly or acting according to how it's</p> <p>19 supposed to, as a bark-and-hold dog, it should never</p> <p>20 engage the suspect, correct?</p> <p>21 A. If there's no aggressive move by the</p> <p>22 suspect --</p> <p>23 Q. Correct.</p> <p>24 A. -- and no move to escape by the suspect?</p> <p>25 Q. Correct.</p>
<p style="text-align: right;">Page 39</p> <p>1 A. It indicated -- well, it would depend. If</p> <p>2 he had started on a track and transitioned to air</p> <p>3 scenting behavior would indicate that he had lost</p> <p>4 the odor from the track for one reason or another,</p> <p>5 or that there was some other stimulus that caused</p> <p>6 him to transition to air scenting.</p> <p>7 Q. Doesn't air scenting occur when a dog is</p> <p>8 on a track and when it gets very close or the odors</p> <p>9 become very strong the dog begins looking up and air</p> <p>10 scenting, looking for what it's been tracking?</p> <p>11 A. That can be one of the times when the dog</p> <p>12 moves to an air scenting behavior.</p> <p>13 Q. Okay. And that's part of a handler's</p> <p>14 responsibility is to be able to read his dog and</p> <p>15 know what that dog is doing at that time, correct?</p> <p>16 A. The handler should be trained and</p> <p>17 experienced in assessing the behavior of the dog as</p> <p>18 the dog searches. And when I say search here, sir,</p> <p>19 I'm using it in the broad sense for the target of</p> <p>20 the search.</p> <p>21 Q. Sure. And since we both have some</p> <p>22 experience with bird dogs, let me put it in the</p> <p>23 context of bird dogs. And I'll let you tell me what</p> <p>24 the equivalent is for K9 handlers. For example,</p> <p>25 when my English Setter gets real close to a pheasant</p>	<p style="text-align: right;">Page 41</p> <p>1 A. That is correct.</p> <p>2 Q. Meaning if the suspect is laying still,</p> <p>3 sitting still, standing still, all that dog should</p> <p>4 do is simply bark and possibly circle and bark at</p> <p>5 the suspect?</p> <p>6 A. Correct.</p> <p>7 Q. Now, when you were working with Monty in</p> <p>8 the field from 1995 to 2000, did you have instances</p> <p>9 in the field where this bark-and-hold process would</p> <p>10 apply where you sent Monty out on a track or a</p> <p>11 search or otherwise and he would find a suspect and</p> <p>12 bark at him?</p> <p>13 A. What do you mean by, when I would send him</p> <p>14 out?</p> <p>15 Q. When you would deploy Monty.</p> <p>16 A. Monty was trained as a bite-and-hold dog,</p> <p>17 and so I'm not sure I follow your question.</p> <p>18 Q. Okay. I was assuming a bark-and-hold --</p> <p>19 maybe that's -- maybe I got off. I thought he was a</p> <p>20 bark-and-hold dog.</p> <p>21 A. Bite-and-hold.</p> <p>22 Q. Okay. Bite-and -- Monty was a</p> <p>23 bite-and-hold dog?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. So let's talk about, have you ever</p>

<p style="text-align: right;">Page 42</p> <p>1 worked or been the handler of a bark-and-hold dog?</p> <p>2 A. I have supervised persons who have had</p> <p>3 bark-and-hold dogs, but I have never been their</p> <p>4 handler.</p> <p>5 Q. Okay.</p> <p>6 A. Not their, the dog's handler.</p> <p>7 Q. The dog's handler. I understand what</p> <p>8 you're saying. So tell me what your definition of a</p> <p>9 bite-and-hold dog is.</p> <p>10 A. A bite-and-hold dog is one that is trained</p> <p>11 at the end of a search behavior -- and if it's okay</p> <p>12 with you, when I say search behavior, unless you</p> <p>13 don't understand, I'd like that just to mean the</p> <p>14 entire gamut of searching for a person, whether it's</p> <p>15 a building search, a trailing, a tracking search; is</p> <p>16 that fair enough?</p> <p>17 Q. Okay. That's fine.</p> <p>18 A. A bite-and-hold dog is one that is trained</p> <p>19 to engage the person at the end of the search</p> <p>20 behavior with a bite, unless there's an intervening</p> <p>21 command given by the handler or some intervening</p> <p>22 circumstance that does not permit a bite to occur.</p> <p>23 Q. Okay. Would you ever use a bite-and-hold</p> <p>24 dog for a safety search? Meaning if you were</p> <p>25 searching for somebody who got lost in the mountains</p>	<p style="text-align: right;">Page 44</p> <p>1 scenario when conducting a search.</p> <p>2 A. Typically, a safety search, as I</p> <p>3 understand you have described it here, the search</p> <p>4 would be one that would be done on lead. And when I</p> <p>5 say on lead, I think you understand, but just for</p> <p>6 clarity's sake, there's a lead or a line between the</p> <p>7 dog's collar, or in some cases harness, and the</p> <p>8 handler. And so the handler has that method of</p> <p>9 control in place. A safety search typically does</p> <p>10 not implicate safety concerns for the officer that</p> <p>11 might come from the suspect. That is to say the</p> <p>12 officer is not usually concerned that the suspect is</p> <p>13 going to pop up with a gun or a club or so forth.</p> <p>14 When looking for a missing person, missing</p> <p>15 people are lost, they want to be found, and they're</p> <p>16 going to cry out for help at the end of -- at the</p> <p>17 end of the search behavior. The officer, of course,</p> <p>18 still has concerns, and I'm not really familiar with</p> <p>19 your area, but where we're at there are a lot of</p> <p>20 environmental concerns. You're out searching for a</p> <p>21 missing person, this time of year venomous snakes</p> <p>22 are an issue, certainly the terrain, itself. So</p> <p>23 that all of that suggests to the officer that she or</p> <p>24 he should be keeping the dog closer.</p> <p>25 Because the officer, at least in most</p>
<p style="text-align: right;">Page 43</p> <p>1 in Utah would you ever send that dog out on a -- or</p> <p>2 deploy that dog for a search for somebody's safety</p> <p>3 or welfare with the belief that no criminal activity</p> <p>4 had occurred?</p> <p>5 A. That would not be an uncommon scenario to</p> <p>6 play out in the area where I work in Utah.</p> <p>7 Q. Okay.</p> <p>8 THE WITNESS: And when you get to a good</p> <p>9 point, I'm ready to dispose of that water.</p> <p>10 MR. BRANNON: We can take a break right</p> <p>11 now. That's fine.</p> <p>12 THE WITNESS: I don't want to interrupt</p> <p>13 your line of questioning.</p> <p>14 MR. BRANNON: No. That's fine.</p> <p>15 THE WITNESS: Okay.</p> <p>16 (OFF THE RECORD)</p> <p>17 BY MR. BRANNON:</p> <p>18 Q. Before we took a break, we were discussing</p> <p>19 the differences in K9 deployment when conducting a</p> <p>20 safety or missing persons search as to what a</p> <p>21 handler would or should do in the event of operating</p> <p>22 a bite-and-hold dog to prevent it from engaging a</p> <p>23 suspect when the search is done for safety reasons.</p> <p>24 I think you were about ready to describe for me what</p> <p>25 that handler would do or should do under that</p>	<p style="text-align: right;">Page 45</p> <p>1 circumstances, doesn't have to be too concerned</p> <p>2 about the possibility of sudden attack, it allows</p> <p>3 the officer to -- the latitude to devote more</p> <p>4 attention to the dog's behavior, which can be</p> <p>5 helpful in trying to locate the person.</p> <p>6 Certainly, the handler should be paying</p> <p>7 enough attention to the dog to make sure the dog's</p> <p>8 not going off into any areas that could be dangerous</p> <p>9 to the dog and to the handler, the edge of a cliff</p> <p>10 or something.</p> <p>11 Q. Meaning that the handler should keep the</p> <p>12 dog pretty tight on the lead, or have a shortened</p> <p>13 lead in that situation?</p> <p>14 A. It could be, depending on the terrain and</p> <p>15 depending on how the search is unfolding, that</p> <p>16 certainly could be a consideration.</p> <p>17 Q. Meaning if it's dark, a nighttime search,</p> <p>18 or the terrain is very dense and you're not able to</p> <p>19 look through it very far. In that instance would it</p> <p>20 be prudent then for an officer handling a K9 to</p> <p>21 shorten the lead to the point where he would know</p> <p>22 exactly where that dog is and what that dog is doing</p> <p>23 to recognize the signs and behaviors of the animal?</p> <p>24 A. The rougher and more dense the terrain and</p> <p>25 the less visibility, all of that would suggest a</p>

1 shorter lead.

2 Q. And as far as a difference between a
3 search for somebody's safety and a fugitive search,
4 what is the difference between a fugitive search and
5 a safety search and how it's conducted by the K9
6 handler?

7 A. The primary -- primary distinguishing
8 factor is that in a fugitive search the officer
9 should be concerned about the possibility of ambush,
10 sudden attack, potentially even hazards that the
11 suspect has placed in the path of the officer. The
12 officer's attention in a fugitive search typically
13 is -- there are much -- there are many more things
14 demanding the officer's attention. The officer not
15 only has to pay attention to the dog, but has to pay
16 attention to the horizon, the environment
17 immediately around her or him.

18 Q. What about conducting the handling of the
19 dog, itself? What's different? Meaning on lead,
20 off lead, the distance he'll allow the dog to roam
21 from the handler?

22 A. Depending on the dog's training, it may be
23 more likely that a fugitive search would be
24 conducted off lead. And distance the dog is allowed
25 to travel away from the handler is going to depend

1 ready for certification, we would -- we'd run
2 through basic obedience and make sure that we
3 weren't going to have any issues with the skills
4 that would be tested in basic certification drills.

5 Q. And are there any minimum requirements in
6 the State of Utah for maintenance training with the
7 K9?

8 A. There are not. By requirements, I assume
9 you mean state requirements?

10 Q. State requirements, correct.

11 A. There are not.

12 Q. Are you aware of any requirements in Ohio
13 for maintenance training for a K9?

14 A. I'm aware that there are some -- no, I'm
15 not.

16 Q. Well, tell me what you are aware of, since
17 you opened up that door?

18 A. Sure. I'm aware that there are state
19 certification standards in Ohio. And I haven't
20 looked at those certification standards for some
21 time, so I'm trying to recall. I don't believe that
22 those certification standards include a prescription
23 as to the hours of in-service training. I could be
24 wrong.

25 Q. Do you feel that maintenance training for

1 on the dog and the handler's ability to control that
2 dog, as well as the terrain and environment.

3 Q. Let's talk about -- back to Monty and you
4 back in Utah. How much maintenance training would
5 you do with Monty back then?

6 A. Well, we would typically do somewhere in
7 the range of three to four hours a week.

8 Q. And what would that training consist of,
9 generally?

10 A. Well, we'd mix it. As is not uncommon, we
11 would have training once to twice a month with other
12 dogs and other handlers. But we'd mix it up between
13 patrol work and odor detection work. If we were
14 doing patrol work, for example, we might go to a
15 high school. There were a couple of businesses that
16 allowed us to come in and do building searches in
17 their buildings after hours, and do building search
18 training. We actually might even do narcotics
19 training in those facilities, as well. One of
20 the -- one of the areas of concern, areas of focus
21 for us, for our sheriff, not surprisingly was drug
22 detection work. And we would do a lot of training
23 in different vehicles with different quantities of
24 controlled substances hidden in different locations.
25 And occasionally, particularly if we were getting

1 K9 units, meaning the handler and the dog, is
2 important to maintain that team at professionally
3 performing levels?

4 A. Yes.

5 Q. And based upon your knowledge, training
6 and experience, do you have any opinion about how
7 often and with what frequency a K9 unit should
8 engage in maintenance training to stay proficient?

9 A. I do.

10 Q. What is that opinion?

11 A. It can vary according to the mission,
12 according to the dog team. Some dog teams require
13 more maintenance training, some require less. Just
14 like some people retain their skill sets better than
15 other people, some dogs do and some dogs don't. The
16 mission can have a significant impact.

17 For example, I am familiar with and served
18 on a committee with the fellow who is the supervisor
19 over the dogs that work the border in El Paso,
20 Texas. Those dogs don't do a lot of maintenance
21 training. I don't know how many hours a week, but
22 it's not very many hours a week, because those dogs
23 are working four to five hours a day with their --
24 an eight-hour shift, four to five hours a day. They
25 have rest periods. Working to detect the odors of

1 controlled substances in hundreds of vehicles as
2 they cross the border checkpoints.

3 The dog doesn't know, nobody tells the
4 dog, and the dog can't comprehend that, hey, this is
5 a training exercise involving ten semi trucks, as
6 opposed to, I need you to find the odor control
7 substance in ten semi trucks. So, in that
8 circumstance, for example, if someone were to ask
9 me, you know, what's a reasonable amount of
10 in-service training, I would tell you that it has
11 varied there because of the mission. A generally
12 accepted number within the police service dog world
13 is 16 hours per month. I'm not aware of any -- I'm
14 not aware of any state that mandates a particular
15 number of hours. But my opinion is that that
16 generally accepted number is a pretty good number to
17 rely on.

18 Q. Okay. And that's accepted, you found,
19 within the law enforcement community for typical
20 patrol service dogs, with drug -- dual purpose dogs
21 and that sort of thing?

22 A. It's accepted within the community. It's
23 accepted within -- I believe that if you had the
24 representatives of the major K9 organizations here
25 that they would give you a -- I think the same

1 number or pretty similar number.

2 Q. Okay. In the maintenance training itself,
3 would you agree with me that because a dog's
4 responsiveness to its handler's commands may erode
5 over time, that police dogs need continual training
6 to assure that they will perform responsibly in the
7 field?

8 A. Yes, generally.

9 Q. Generally, the maintenance training for a
10 K9 unit within a department, whose responsibility is
11 it to see that that dog receives the appropriate
12 training before it's deployed in the field? Meaning
13 maintenance training or to make sure it's current
14 on -- or performing at professional levels?

15 A. First line responsibility rests with the
16 handler.

17 Q. And then after that?

18 A. Well, that certainly should be something
19 that someone in the supervisory chain should have
20 oversight for, whether that's a chief, sergeant, a
21 major, depending on the structure of the
22 organization and the line of direct report for K9
23 issues.

24 Q. Okay. And you've reviewed the documents,
25 familiar with the Springboro Police Department, in

1 this particular case, correct?

2 A. I'm familiar with what I've seen of the
3 department's organization and the documents. I
4 haven't done any research into -- into the
5 department outside of what I've seen in the
6 documents here.

7 Q. Okay. Meaning in the -- there were two K9
8 policies produced in this case. Are you familiar
9 with both of those documents?

10 A. I'm aware there were two policies
11 produced, yes.

12 Q. Okay. There was one that was never
13 officially adopted, the policy that was in existence
14 at the time of both the Campbell and Gemperline
15 bite, correct?

16 A. Tell me more about which policy you're
17 referring to.

18 Q. This would be the one printed off of
19 somebody's website, Terry Fleck's website or --

20 A. Terry Fleck's website?

21 Q. Terry Fleck's website, yeah.

22 A. It says at the top, International
23 Association Chiefs of Police?

24 Q. Correct.

25 A. Yes. I'm aware of that policy.

1 Q. Okay. Under that policy, who at
2 Springboro would have been in charge of monitoring
3 the K9 unit to your knowledge?

4 A. The two parties most involved in that
5 would have been the chief of police, Kruithoff, it's
6 K-R-U-I-T-H-O-F-F. And the officer, Officer Nick
7 Clark.

8 Q. Okay. So in this particular instance you
9 believe that it was Chief Kruithoff's responsibility
10 then to monitor and supervise Officer Clark directly
11 then?

12 A. I understood your question as to ask me
13 who is involved in overseeing the unit and the
14 policy, and that would have been Chief Kruithoff and
15 Officer Clark.

16 Q. Okay. Let me ask you to -- maybe ask you
17 a different question then if you feel that this is a
18 different question. My question to you now is, who
19 at the Springboro Police Department then was in
20 charge of monitoring the performance of Nick Clark
21 and his K9?

22 A. Other than Nick Clark?

23 Q. Other than Nick Clark at the Springboro
24 Police Department.

25 A. The responsibility for monitoring his

<p style="text-align: right;">Page 54</p> <p>1 performance would have gone up the supervisory 2 chain. So his immediate chain of supervision. 3 Q. Okay. Meaning his shift sergeant, to a 4 lieutenant, to the chief? 5 A. Typically meaning a sergeant, whether they 6 did nominate that person as shift sergeant or not, 7 I'm not sure. I don't recall how they identified 8 it, but typically sergeant, lieutenant and chief. 9 Q. And the person supervising K9 units, would 10 you agree with me that they should have some 11 knowledge in how they operate and how they should be 12 operating, and what professional performance 13 standards should be entailed with the operation of a 14 K9 unit, meaning how they should perform? 15 A. I think it would be optimal for the 16 supervisors to be as knowledgeable as possible in 17 those areas that you've just described. 18 Q. Can we agree that it doesn't make a whole 19 lot of sense to have a supervisor supervising 20 something he doesn't know anything about? 21 A. I think as a general proposition, but 22 that's a pretty broad statement to say that he 23 doesn't know anything about. 24 Q. Meaning for somebody to be supervising a 25 K9 unit they should know something about how that K9</p>	<p style="text-align: right;">Page 56</p> <p>1 have a bite-and-hold or a bark-and-hold dog, based 2 upon your review of the records and information that 3 you were provided in this case? 4 A. I believe this dog was trained as a 5 bite-and-hold dog with reference to how it conducted 6 its search behaviors. 7 Q. Okay. And that's your opinion with how it 8 performed in the field, that he performed as a 9 bite-and-hold dog would perform, correct? 10 A. Correct. 11 Q. My question is, based upon the policies 12 and other information that you reviewed in this 13 case, was the Springboro Police Department supposed 14 to have a bite-and-hold trained dog or a 15 bark-and-hold trained dog? 16 A. Are you asking me what the -- when you say 17 police department, who are you referring to? 18 Q. The Springboro Police Department, right. 19 A. But are you referring to -- 20 Q. The only one we're dealing with here. 21 A. Right. Are you referring to the chief, 22 are you referring to someone in the chain of 23 command? Tell me -- 24 Q. I'm referring in accordance with the 25 policies of the police department that were in place</p>
<p style="text-align: right;">Page 55</p> <p>1 unit should operate, or what it's supposed to do; 2 fair statement? 3 A. It would be a fair statement. Certainly, 4 the person supervising certainly should be in a 5 position to ask -- ask probing questions of what the 6 K9 unit is doing to make sure that what the K9 unit 7 is doing is consistent with the mission of the 8 police department. 9 Q. Do you know or do you have an opinion 10 about what the purpose was for the K9 unit of the 11 Springboro Police Department in this matter? 12 A. I believe that -- I believe that I 13 understand the mission of the K9 unit in this 14 particular department to be -- to deploy a dual 15 purpose dog. That is one that was trained both in 16 patrol work and odor detection work. 17 Q. Was the dog in this instance to be 18 deployed as a bark-and-hold dog or a bite-and-hold 19 dog, as you've defined the terms? 20 A. Well, as I've defined the terms, I think 21 that there was some -- I don't think that that was 22 clearly understood universally at all levels in the 23 police department. 24 Q. That's not my question. My question is, 25 was the Springboro Police Department supposed to</p>	<p style="text-align: right;">Page 57</p> <p>1 at the time of this -- these two incidents involving 2 Plaintiffs Gemperline and Campbell. Was the police 3 department supposed to have a bite-and-hold trained 4 dog or a bark-and-hold trained dog? 5 A. Well, one of the -- one of the challenges 6 here, as I understand your question, is the policy, 7 which was, shall we say, I believe, copied without 8 alteration from -- and I believe the source was 9 Terry Fleck's website, but the International 10 Associate of Chiefs of Police policy that was copied 11 without alteration was a policy that was written to 12 govern the behavior of what IACP defined as a 13 bark-and-hold dog. And that I understand to have 14 been the policy as you identified in effect at the 15 time of these two incidents. 16 Q. Okay. So if I understand your answer 17 then, that policy identified a bark-and-hold dog. 18 Was it then your understanding that this policy was 19 in place or not in place -- 20 A. To my -- 21 Q. -- during the times of the Campbell and 22 Gemperline bites? 23 A. My understanding from what I reviewed, 24 that this is a policy that when Chief Kruithoff and 25 Officer Clark had a discussion that this is the</p>

<p style="text-align: right;">Page 58</p> <p>1 policy that the chief agreed that Officer Clark 2 should generally refer to in operating the K9 unit 3 within that department. 4 Q. Okay. You've been identified as an expert 5 in police policy and procedure, correct? 6 A. Yes. I haven't seen a designation but I'm 7 assuming so. 8 Q. Okay. Tell me -- let's start with this. 9 What do you believe that you're an expert in as far 10 as the field of K9 -- K9s go in reference to a 11 police department? 12 A. I would represent that I have a certain 13 expertise in formulating, designing, maintaining, 14 updating policy with respect to the operation of 15 police service dog units. I have previously 16 testified and been accepted as an expert on that 17 particular area. I believe that's one of the 18 purposes that I've been called into this case to 19 talk about. 20 Q. Okay. Are you an expert in any other 21 area, besides a policy expert, as it pertains to 22 police K9 units? 23 A. I've testified with respect to when dogs 24 should be deployed, patrol dogs. I'm qualified as 25 an expert in those situations and also in the</p>	<p style="text-align: right;">Page 60</p> <p>1 described it, you would have some knowledge of when 2 a policy has or has not been adopted by a police 3 department, correct? 4 A. I would. 5 Q. And you've reviewed certainly some 6 depositions and other documents that have been 7 provided to you by Mr. Weisenfelder here in 8 reviewing your files. Do you have an opinion about 9 whether or not the Springboro Police Department had 10 a K9 policy in place at the time of the Gemperline 11 and Campbell bites? 12 A. I do. 13 Q. What's that opinion? 14 A. There was a policy that was in place and 15 not gone through the formal -- I don't know that, 16 but it's my belief that it had not gone through the 17 same formal policy process as other policies in the 18 department. 19 Q. Okay. Meaning it was never officially 20 adopted by the Springboro Police Department in this 21 case, correct? 22 MR. WEISENFELDER: Objection. Go ahead. 23 A. I'm not sure what the policy process was 24 for the police department. If officially adopted 25 simply means the chief approved it, that would be</p>
<p style="text-align: right;">Page 59</p> <p>1 deployment of dogs to search for the odor of 2 controlled substances. 3 Q. And when you say when dogs should be 4 deployed, is that from a supervisory position as an 5 expert when dogs should be deployed, or is that from 6 a handler position when dogs should be deployed? 7 A. Well, both. One would hope that there 8 would not be a disconnect between those two levels 9 of decision making. 10 Q. Okay. So you believe that you're an 11 expert in both of those areas? 12 A. Yes. 13 Q. Okay. Are you an expert in training K9s? 14 A. No. 15 Q. Or K9 performance in the field, meaning a 16 judge, evaluator, anything like that? 17 A. I participated in evaluations and 18 certifications, but I don't believe that I would 19 hold myself out as an expert in that area. 20 Q. Okay. In the performance of the K9 in the 21 field? 22 A. In judging the performance, no. 23 Q. Okay. 24 A. I've never qualified as a judge. 25 Q. Okay. And as a policy expert, as you've</p>	<p style="text-align: right;">Page 61</p> <p>1 different than adoption meaning that it was 2 necessarily published and put out and made available 3 to the public. I don't know what officially adopted 4 means for that department. 5 Q. Okay. And would you agree with me that 6 typically when a police policy is adopted by a 7 police department it is included in the master book 8 of the department's policies and procedures? 9 A. Typically, that would be the case. 10 Q. And that that book would then be 11 disseminated or at the very least made available to 12 all of the officers in the department? 13 A. Perhaps. 14 Q. Okay. Perhaps or should? 15 A. Perhaps. 16 Q. If it was not included in a policy and 17 procedures manual that was either made available or 18 disseminated to other law enforcement officers 19 within the department, how then, based upon your 20 knowledge, training and experience, would the other 21 officers on the department have knowledge regarding 22 said policy and procedure? 23 A. They may not. It would depend on which 24 officers you're referring to. 25 Q. Let's talk about the other officers in the</p>

Springboro Police Department in this case.

A. Well, again, I don't know what their -- I don't know what their -- what the department's practice had been with reference to publishing or making available their policy manual.

Q. Are you familiar with any of the Ohio requirements for a police department adapting officially a department policy or procedure?

A. I am not.

Q. When is the use of a police K9 the use of force?

A. Well, that can vary, but the clearest use of force is when the dog actually engages someone with a bite.

Q. Is it a use of force in any other context?

A. It can be. Some dogs are trained to knock people down.

Q. Is that to say that it's your opinion that a K9 is not a use of force unless it makes physical contact with the suspect?

A. Well, what is and what isn't the use of force is, I suppose, ultimately a question for the court. But one clear defining perimeter would be whether there is contact that's injurious or intended to be injurious. When you say contact,

answer, I would add the qualification that the contact that's intended to be injurious or apply some force.

Q. Okay. Is there any other instance where use of a K9 is a real or implied use of force?

A. Yes.

Q. Okay. What is that?

A. Well, you've now added the word implied use of force. So, by way of example, I'm thinking of a building search where there's a burglar alarm, for example, that's gone off and officers are called. They go to an open door of a warehouse and call out into the warehouse, this is the Salt Lake City Police Department. We know you're here, we have a police service dog, come out or we'll send the dog in and you may be bitten. And the handler gives the dog the command to speak, and the dog barks. I think that's -- that could be construed as an implied use of force.

Q. Anything else that you can give me where a K9 would be either a real or implied use of force?

A. Suspect is fleeing and an officer calls the suspect to stop or I'll send the dog. And those are, I suppose, the most obvious examples that come to mind.

sir, I mean, my dog did now pass away, but if my dog were in the room and I called the dog to come to me and he chose to come under the table and brush past your legs, that's contact. But I wouldn't -- I wouldn't think that any of us here would define that as a use of force.

Q. Okay. And you've told me that you're an expert in this area, and I'm trying to understand what you believe is a use of K9 force. And it is -- and so far you've described for me instances where the dog has -- makes a physical contact, not necessarily an incident brushing up against, but where the dog engages or intentionally makes contact with a suspect.

A. I want to do my best to answer your question. I'm not quibbling with you, but if you could add to that in a manner that's injurious or likely to be injurious. Because, again, the dog can come up and -- I'm thinking of my own experience now, my own dog. The dog can come up and rub his nose on your knee because he wants you to pay attention to him, much like a child might. I wouldn't term that as a use of force. And yet it's not just passing, it's not incidental, it's intentional on the part of the dog. So, to your

Q. Can a K9 be deadly force?

A. What do you mean by deadly force?

Q. Meaning force that either kills or is capable of killing when it's deployed?

A. Well, yeah. I think -- I think as illustrated by the United States Supreme Court, that's a -- ultimately a legal question but --

Q. I'm asking you. You're an expert. As you stated, in the use of force and K9 force, specifically.

A. Sure.

Q. I'm asking you, not the United States Supreme Court, if a K9 use of force is or can be deadly use of force?

A. There are at least one -- there is at least one incident in which I am aware that a police service dog bite has resulted in death. So, in that context, in the factual context as opposed to in many, many legal decisions that use of a police service dog is not use of deadly force. In the way you've asked your question, as you've framed the definition, then the answer is yes.

Q. Do you believe the use of K9 force is deadly force?

A. I do not.

1 Q. Where do you believe the use of K9 falls
2 on the use of force continuum?

3 A. One of the manifold criticisms of a use of
4 force continuum is that there is not a generally
5 accepted and universal continuum in the law
6 enforcement world. There are many other criticisms
7 as to why agencies ought not to use a use of force
8 continuum, but that's one of them. One, perhaps,
9 that is most applicable here. And so the answer is,
10 I don't know, it depends on how an agency defines
11 its own -- if an agency has a use of force
12 continuum. And if they use it as a policy tool as
13 opposed to merely an exemplary tool or a training
14 tool. It's really the agency that places that dog
15 in the spectrum somewhere.

16 Q. Are you familiar whether or not the
17 Springboro Police Department in this case had a use
18 of force policy in effect at the time of the
19 Campbell and Gemperline bites?

20 A. I believe that they had a use of force
21 policy in effect at that time, yes.

22 Q. And are you familiar with where the K9 use
23 of force fell within that use of force policy?

24 A. If I reviewed that, it's not something
25 that I can recall right now.

1 Q. I'm going to have -- hand you what we've
2 marked as Deposition Exhibit S2, previously.

3 A. Yes.

4 Q. Do you recognize that document that I've
5 handed you?

6 A. I think I've seen the content, but I don't
7 recall seeing a chart form.

8 Q. Okay.

9 A. I may have.

10 Q. Do you know what this document is, or what
11 you recognize it to be?

12 A. I believe this to be an excerpt from the
13 general policy manual of the Springboro Police
14 Department.

15 Q. Okay. And it's titled Section 1.3.1, Use
16 of Force. And I'll ask you again in reference to
17 this policy, do you know where K9 use of force falls
18 in the use of force continuum as it's presented in
19 this policy of the Springboro Police Department?

20 A. I do.

21 Q. And go ahead and tell me.

22 A. It's put at the midpoint. It is -- the
23 exemplary action that it's juxtaposed with here is
24 wrestling with an officer or pushing an officer.

25 Q. Meaning, you put it in that same category

1 with impact weapons, striking structural areas,
2 baton with restraints and K9 use?

3 A. I didn't put it there, but that's where it
4 appears in this document.

5 Q. Okay. And you've been involved in
6 drafting use of force policies and K9 policies,
7 correct?

8 A. I have.

9 Q. Is that the same place where you would
10 place the K9 usage as far as use of force goes?

11 A. No.

12 Q. Where would you place it?

13 A. I would never draft a policy that has a
14 use of force continuum in it.

15 Q. So you would never -- if you were drafting
16 a policy, you would never use a K9 use in the use of
17 force continuum?

18 A. I would never draft a policy that has a
19 use of force continuum in it.

20 Q. You don't believe in them?

21 A. I don't.

22 Q. Let's go back to some of your training
23 that you've received when you were working as a
24 reserve officer for Utica --

25 A. I appreciate that you're kind enough to

1 forgive me my decade of being off. And I will
2 return the favor by --

3 Q. I'll trade you on that and we'll just quit
4 correcting --

5 A. All right.

6 Q. What other formal training did you engage
7 in back then in relation to police K9s outside of
8 your maintenance training?

9 A. I would typically attend a state-sponsored
10 training refresher course every year that typically
11 would be three days in length. And I would
12 typically attend at least one, some years two
13 week-long canine refresher training seminars at
14 different locations in the United States. There was
15 a period of time when the Phoenix Police Department
16 was -- they rebuilt their K9 unit, purchased a
17 number of dogs, I want to say 26, I think, and
18 brought in a number of new handlers. They
19 contracted with a fellow that I knew to go to
20 Phoenix for somewhere in the neighborhood of three
21 months to supervise this training program. And so I
22 traveled to Phoenix a couple of times to assist in
23 providing training in that project, and then worked
24 in a similar project in Sacramento, California. So,
25 in terms of time, typically a minimum of two full

1 weeks a year in addition to maintenance training,
2 and some years more.

3 Q. Okay. Was that necessary to keep Monty up
4 to professional performing levels to engage in that
5 maintenance training?

6 A. The maintenance training or the training
7 in addition to the maintenance training?

8 Q. All the training I -- let me just --

9 A. I'm sorry. I might have misunderstood
10 your question.

11 Q. Yeah. I'm saying all that training that
12 you did, the maintenance training, the two weeks a
13 year, and this other stuff that you did for the
14 other -- with the other departments, was that
15 necessary to keep Monty performing to professionally
16 accepted levels?

17 A. No.

18 Q. So you feel that you engaged in training
19 that wasn't necessary?

20 A. Some of it I was engaged in because I was
21 paid to go do it, but it wasn't necessary to my
22 responsibilities.

23 Q. Speaking of paid to do it, what have you
24 been paid so far to provide opinions in this case or
25 do review work?

1 this case?

2 A. It is.

3 Q. And it lists several documents that you've
4 reviewed before writing that report. Have you been
5 provided any additional documents since you wrote
6 this report that you also reviewed?

7 A. I have.

8 Q. And what have you been provided
9 additionally?

10 A. Depositions of Nick Clark, Sgt. -- starts
11 with a Z --

12 Q. Zimmaro.

13 A. Zimmaro. Mr. Campbell's girlfriend,
14 Lisa --

15 Q. Lisa is correct. I don't remember the
16 last name either.

17 A. Okay. I think a very short deposition of
18 the girlfriend, Lisa, Chief D'Amico, Mr. Campbell,
19 Ms. Gemperline. I believe that's it with the
20 depositions. And then I've been provided a
21 memorandum decision, a long one, from Judge Dlott,
22 did I pronounce that correctly?

23 Q. Correct.

24 A. And I don't know whether Mr. Weisenfelder
25 provided it to me or whether I saw this in the

1 A. I don't know. I could -- I'm guessing
2 that my bill hasn't been produced to you.

3 Q. It has not.

4 A. I can look at the next break, if you'd
5 like.

6 Q. Okay. And I've been provided a copy of
7 your report, which we'll go ahead and mark. Let's
8 just mark it Plaintiff's One.

9 (PLAINTIFFS' EXHIBIT ONE WAS MARKED FOR THE RECORD)

10 (OFF THE RECORD)

11 BY MR. BRANNON:

12 Q. You were able to check when we went off
13 the record and I had asked you previously what you
14 have been paid so far for your opinions in review of
15 your work in this case.

16 A. And the answer is \$5,800.

17 Q. Okay. And I have provided you with a copy
18 of what's been given to me as your report. Do you
19 recognize that document?

20 A. I do.

21 Q. Is that a true and accurate copy of that
22 document?

23 A. I haven't gone through it word for word,
24 but it appears to be an accurate copy.

25 Q. And that's the report that you issued in

1 normal course of my work, but I saw the Sixth
2 Circuit opinion on this case. I believe I did. I'm
3 not certain.

4 Q. Okay.

5 A. And then I'm not sure if you produced
6 subsequent responses to interrogatories, or any
7 subsequent discovery. I may have seen that, as
8 well. If I did, we're talking stuff that happened
9 early in 2010. I'm the guy who's off by ten years
10 here today, so my memory may not be accurate. But
11 if I've seen it, other than the depositions, it's in
12 those two bucket files there today. I brought for
13 you everything that I have outside of the
14 depositions, and what I have prepared, which has
15 been two billings and this report. You have the
16 report and I've told you what's in the billings. So
17 everything else is sitting there on the table with
18 you.

19 Q. Okay. And I noticed when I looked through
20 those files there were not notes or handwritings or
21 otherwise pertaining to these files. Did you not
22 take any notes in going through this, or what?

23 A. I suspect if you looked carefully you -- I
24 typically don't write on the documents, but you
25 might find some highlighting. Occasionally you'll

1 find a tick mark to the side. You'll find a tick
 2 mark to the side that probably indicates that's
 3 where I stopped reading one night and picked up the
 4 next evening. I don't typically keep notes. What
 5 I -- my usual practice is to begin a document in a
 6 word processing format. I do it a little bit
 7 different nowadays than this. Actually, I do it a
 8 fair bit different. But when I was doing this, I
 9 would review the materials, think them through, come
 10 up with what I thought were the salient opinions. I
 11 would write those in a word processing document.
 12 And then I would just start a list of things that
 13 I -- came to mind from what I'd reviewed that I
 14 needed to discuss in the report. And I usually
 15 would number that list, and that then became the
 16 skeleton word processing file on which I would build
 17 my report. And almost always the end product is
 18 pretty close to the road map that's begun. We may
 19 get to the end and move things around because I
 20 think that the flow goes better in terms of temporal
 21 progression, but that's how I do things. That's how
 22 I did things then.

23 Q. And this report that you provided offers
 24 certain opinions. Did the additional materials that
 25 you were provided with change any of the opinions

1 that are contained in your report that's before you
 2 there?

3 A. It did not.

4 Q. Did you have any additional opinions that
 5 you were going to give at trial, or that you
 6 formulated that are not contained in the report
 7 that's before you?

8 A. I do not.

9 Q. And if you do have any additional opinions
 10 that you will be offering for trial prior to trial
 11 on any matter related to this case, I would ask that
 12 you notify Mr. Weisenfelder and that I be made aware
 13 of those opinions; fair enough?

14 A. I'll agree to that.

15 THE WITNESS: And as you're thinking, I'm
 16 going to take two minutes. I'll be right back.

17 MR. BRANNON: We'll take a break.

18 (OFF THE RECORD)

19 BY MR. BRANNON:

20 Q. When is the last time that you spoke with
 21 Mr. Weisenfelder regarding this case, besides this
 22 morning?

23 A. I spent some time with him last --
 24 yesterday afternoon when I got into town.

25 Q. Okay. How much time did you spend with

1 him?

2 A. It was -- well, I was in his office for
 3 two and a half hours, but my granddaughter in Brazil
 4 called to wish me happy birthday. So he was
 5 gracious enough to let me spend probably 20 minutes
 6 on the phone with her and my son. So maybe two
 7 hours, two hours and ten minutes or so.

8 Q. And what documents did you review
 9 yesterday in his office?

10 A. I didn't review any documents yesterday.

11 Q. You just had discussions with him?

12 A. I didn't review any documents in his
 13 office. I did review Lisa -- I should have looked
 14 at her depo last night --

15 Q. Sam Campbell's girlfriend?

16 A. Yes, but with Mr. Weisenfelder I just had
 17 a discussion.

18 Q. Okay. Let's get back to your history with
 19 the -- with K9s. I believe before we broke last
 20 time that you continued in your position as a
 21 reserve K9 officer with the --

22 A. Uintah.

23 Q. Thank you. County Sheriff's Office up
 24 until 1995 or '94?

25 A. No. From then until approximately 2000 --

1 Q. 2000, 2001, okay.

2 A. I see I've got you messed up on dates now.

3 Q. Since that time what was your next job, or
 4 job involving police K9 units in any capacity?

5 A. Not long after I wrapped up the murder
 6 trial in Uintah County, and then became a full-time
 7 employee of the Utah Department of Public Safety,
 8 Peace Officers Standards and Training Division. I
 9 was promoted and given a new assignment as bureau
 10 chief. And as bureau chief the -- one of the
 11 programs that reported directly to me was the Utah
 12 post K9 training section. So I held direct first
 13 line reporting authority over the police service dog
 14 training for Utah, as well as the service dog
 15 training for dog teams that were deployed by the
 16 Department of Public Safety.

17 Q. Okay. So when you say you supervised
 18 them, this Utah post K9 training section was a
 19 section underneath you that developed the -- and
 20 this may or may not be the correct terminology,
 21 policies and procedures for training and developing
 22 K9 teams in the State of Utah?

23 A. It would be more accurate to say training
 24 and certification.

25 Q. Okay.

<p style="text-align: right;">Page 78</p> <p>1 A. Key role of that group was testing and 2 certification in different types of police service 3 dog teams throughout the state. It's analogous to 4 what you folks call here OPOTA. 5 Q. And that's to say then that that section 6 then would report to you and give their proposals 7 and recommendations for training and certification 8 standards for the State of Utah. And then you would 9 either approve or disapprove set policies that they 10 recommended; would that be how that worked? 11 A. Yes. But the final -- yes, it would. But 12 there was one other level of final approval, and 13 that was the council -- the governor appoints a 14 17-member council to oversee the group that hosts. 15 And so council ultimately, on anything that involved 16 testing, certification. Like the council would have 17 to give its stamp of approval. 18 Q. They're the governing body that would 19 actually approve the standards? 20 A. They're the political governance of the 21 organization, yes. 22 Q. Okay. And so the main people that were 23 drafting these things was the second -- you 24 designated each section for -- you'd have like a K9 25 section, you'd have a --</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Unrelated to K9 -- 2 A. Yes. 3 Q. Okay. 4 A. As well as investigations. 5 Q. So the K9 component to this was just a 6 small part of your overall supervisory role? 7 A. It was one of three sections that I had 8 direct supervision over. 9 Q. Okay. And how long were you in that 10 capacity? 11 A. Until I became chief at the attorney 12 general's office in spring of 2005. 13 Q. Okay. So you never had any direct 14 supervisory role or capacity over K9 units, 15 themselves, am I correct? Meaning within a police 16 department or a sheriff's office? 17 A. That's not absolutely correct. Would you 18 like me to explain? 19 Q. Yes. You tell me what your training is as 20 a direct supervisor of K9 units within either a 21 police department, a sheriff's department or 22 something like that. 23 A. That's probably the shortcut here. The 24 Department of Public Safety Peace Officers Standards 25 and Training had a section that we've talked about,</p>
<p style="text-align: right;">Page 79</p> <p>1 A. I had a K9 certification and in-service 2 sections. 3 Q. Okay. So two different sections under 4 K9s? 5 A. No. I'm sorry. No, just one -- one 6 section under K9, then the in-service, that was the 7 training -- the group that oversaw training of peace 8 officers for the whole state, unrelated -- 9 Q. Okay. 10 A. -- radar, you know, intoxilyzer, that sort 11 of stuff. And then certification was the 12 investigations folks who investigated allegations of 13 misconduct by police officers for purposes of 14 licensing. K9 is a separate section from those two 15 separate -- and those two sections were separate and 16 distinct. 17 Q. Okay. So what direct role did you have 18 with the K9 training sections? 19 A. I supervised the people who actually 20 worked -- the line workers who worked in those 21 sections. 22 Q. Okay. And then you also supervised the 23 same line workers that developed the standards for 24 in-service training -- 25 A. Unrelated to K9 --</p>	<p style="text-align: right;">Page 81</p> <p>1 the supervised training and certification of police 2 dog teams in Utah, generally. In addition to that, 3 one of the folks in that section also is designated 4 as a handler, and handled, I believe at the time, 5 two dogs. 6 He handled a general purpose, that is a 7 patrol/controlled substance detector dog. And then 8 he had a dog that was a single purpose explosive 9 detector dog. And I supervised him as a handler. 10 He would be deployed in the field for, I think, 11 primarily -- I don't know percentages. The majority 12 of his time was to be deployed in the field as one 13 of the few explosive detector dog handlers that we 14 had in the state, particularly prior to the 2002 15 Winter Olympics. 16 Q. Okay. And then the other dog you said was 17 mainly a drug dog? 18 A. No. The other dog was a dual purpose dog. 19 Q. Dual purpose. Okay. 20 A. And that supported a mission on the 21 highways of the state. 22 Q. Okay. And at that time, how many officers 23 were you supervising besides this one particular K9 24 officer that operated two dogs? 25 A. I think the highest number at any one</p>

<p style="text-align: right;">Page 82</p> <p>1 point in that assignment, sworn officers and 2 non-civilian staff, would have been seven. 3 Q. Okay. And that was through the Utah 4 attorney general's office? 5 A. No. 6 Q. No. Department of Public Safety? 7 A. Department of Public Safety, Peace 8 Officers Standards and Training Division. 9 Q. Okay. So they operated some officers 10 independently in the field? 11 A. Yes. 12 Q. Okay. 13 A. But a very small -- very small number. 14 Q. Okay. They work for special climates like 15 the Olympics or something like that? 16 A. Well, the K9 team -- the K9 team had a 17 great deal of field assignments, and they primarily 18 related to special events. The Olympics, Secret 19 Service was coming to town. It was not uncommon to 20 have the president or vice-president coming to Salt 21 Lake City for some event or another, that sort of 22 thing. Not a very common occurrence. 23 The other officers had field assignments, 24 but they weren't necessarily related. During the 25 Olympics they had field assignments that went, gosh,</p>	<p style="text-align: right;">Page 84</p> <p>1 bureau chief after I left. Some time after I left I 2 was appointed to the council. And then I was 3 recently reappointed in January of this year. So 4 I'm serving a second -- I served a term years 5 before, and now I'm serving a second four-year term. 6 So, you know, I -- ultimately, when the discussion 7 comes up of the police service dog program, rules, 8 regulations, certifications, so forth, ultimately, 9 you know, I have a role approving or not approving, 10 but it's not a very significant role. 11 Q. And the component of that is K9? 12 A. It's fairly small. I think I'm the 13 only -- of the 17 people on the council, I'm the 14 only -- or maybe there's one other person who ever 15 had any K9 experience at all. So when that comes 16 up, you know, I probably get five minutes to say, 17 hey, guys, I think this is good or I think this is 18 bad, and here's why, one way or the other. It's a 19 very small role. 20 Q. Okay. Any other K9 experience in your 21 career? 22 A. I currently participate in writing K9 23 policies for approximately 1,400 agencies in the 24 United States. 25 Q. And when you say for 1,400 agencies, I</p>
<p style="text-align: right;">Page 83</p> <p>1 18 hours a day for a long, long time, but they had 2 other duties during other times. 3 Q. Sure. 4 A. But these are not -- when you're thinking 5 of police, these aren't guys that are out doing 6 patrol work for the most part, with the exception of 7 the one dog handler. 8 Q. Okay. Anything else with the Utah post K9 9 wise? I'd assume you were the supervisor for the 10 section, or that you oversaw the section that made 11 the recommendations for the changes for the state, 12 and sounds like this one dog team was utilized for 13 special event purposes? 14 A. Correct. 15 Q. Anything else K9 related there? 16 A. Yes. Although not to a significant 17 degree. 18 Q. Okay. And what is that? 19 A. The governor appointed me a couple of 20 times. I currently am serving a second term on the 21 Council on Peace Officer Standards and Training. So 22 I'm on the -- when I refer to the political body 23 that controls the police academy -- 24 Q. POST? 25 A. POST. I left and I was an employee, a</p>	<p style="text-align: right;">Page 85</p> <p>1 don't see how any one man can write 1,400 policies, 2 but go ahead and tell me how that -- 3 A. I don't. There's another guy who works 4 with me. 5 Q. Yeah. How you then participate in it. 6 A. Let me give you what I think will get to 7 what you need to know in the quickest time. I work 8 with a company called Lexipol, L-E-X-I-P-O-L. 9 Lexipol is the nation's largest group of risk 10 management consultants and policy providers for law 11 enforcement. Lexipol provides a policy manual for 12 sheriff's offices, police departments, state police 13 entities, district attorney investigator bureaus, 14 state attorney general investigation bureaus. I 15 don't know how many of those there are, but we 16 supply K9 policies to about 1,400 of those agencies 17 primarily in the Western United States. Almost all 18 the agencies in California. And the overwhelming 19 majority of agencies in Idaho, many in Utah, many, 20 if not most, in Washington, Oregon, a number in 21 Texas, Colorado, Arizona, Illinois. I'm going to 22 have to stop there. There are other states, but I 23 have to have documents in front of me. Within the 24 company there are people with different areas of 25 responsibility. One of my areas of responsibility</p>

1 is the K9 policy. I share that responsibility with
2 another fellow who has a similar background to me.

3 Q. Who is the other fellow?

4 A. Bruce Praet, P-R-A-E-T.

5 Q. And where is he out of?

6 A. Sherman Oaks, I believe.

7 Q. Sherman Oaks?

8 A. California.

9 Q. California. When I looked at your list of
10 qualifications and work in your report that's
11 sitting in front of you, it listed some consulting
12 work for an insurance company, or something of that
13 sort. Was that for this Lexipol that you mentioned?

14 A. No.

15 Q. That was separate? Okay. Let's stay on
16 this Lexipol then. When you say that you draft
17 policies for 1,400 police departments, do you
18 have -- or supply through Lexipol, is it model
19 policy such as the one that Mr. Fleck posted on his
20 website, the model policy for the chief of police?

21 A. I believe -- my understanding is that a
22 few years back, because of some limitations with the
23 K9 policy and other policies, I believe that the
24 International Association of Police -- Chiefs of
25 Police stopped referring to those policies as model

1 Q. You just have the K9 section in that?

2 A. I have some others, but that's one of
3 them.

4 Q. Okay. So you don't actually write the
5 policies that are adopted by these 1,400 agencies.
6 You provide them through Lexipol where they choose
7 what their best practices are going to be in
8 developing their own policy for their particular
9 department. Am I correct in stating that?

10 A. In a gross sense, that's correct. Many of
11 them find that the best practice fits them
12 perfectly. Some will use the guide sheet and ask
13 questions and will modify the policy somewhat,
14 typically in a dialogue with those of us responsible
15 for preparing that particular best practice policy.

16 Q. Okay. So the best practices policy,
17 that's sort of a model policy? I know you don't
18 like the term --

19 A. We avoid that term model for a bunch of
20 reasons, but it is what many people call -- in fact,
21 if you were to ask most of our clients, well, what
22 is it you -- well, we get this model policy manual.

23 Q. Okay.

24 A. As I think you --

25 Q. Industry term.

1 policies. I don't know what they call them now.
2 But the policies that we provide are -- the typical
3 product that we provide is a manual of best practice
4 policies that spans the gamut of risk areas for law
5 enforcement agencies. And then with those policies,
6 there are guide sheets provided with questions that
7 an agency works through to determine which
8 components of a policy fit them. How they fit that
9 particular agency. So the agency makes some --
10 they're decision driving questions.

11 Q. Okay. And this is in a best practices
12 manual that you and Bruce Praet produced for
13 Lexipol?

14 A. There are a lot of people involved. I
15 don't know how many, 50 or so involved, but in the
16 K9 area it's primarily those two, myself and Bruce.

17 Q. Yeah, but I'm just asking you about the
18 K9.

19 A. Okay.

20 Q. So, for the K9 component of that --

21 A. But I don't want you to have the
22 impression that I produced that entire manual,
23 because I really -- I don't.

24 Q. Okay.

25 A. A small --

1 A. -- as I think you mean it, and as most
2 people in the industry mean it, it's a model policy.

3 Q. Okay. I'm going to ask that you produce
4 for me, through Mr. Weisenfelder, your best
5 practices policy, your manual for K9s. You don't
6 have to give me the whole Lexipol -- Lexipol
7 whatever, but I want what you've developed with
8 Bruce Praet as what you're contributing to Lexipol.
9 I take it you have that in your possession?

10 A. I actually don't. You mean here today?

11 Q. No, not today.

12 A. No.

13 Q. But you have it at home somewhere, I'm
14 sure.

15 A. I do have certain documents. I'll have to
16 have the discussion with Mr. Weisenfelder as to what
17 is my property to provide to him, as opposed to what
18 is not. I think for your purposes, I can -- I can
19 provide you with, for example, the Utah Department
20 of Public Safety K9 policy, which is produced by
21 Lexipol. So I can give you my work product, but it
22 may have someone else's label on it.

23 MR. WEISENFELDER: And all that I ask is
24 that you follow the request up in a letter to me,
25 so I make sure that we're on the same page as to

<p style="text-align: right;">Page 90</p> <p>1 what's being requested.</p> <p>2 Q. Okay. And I just want to make sure that</p> <p>3 we're clear on what I'm asking. It sounds like</p> <p>4 there's two things. There's a Utah Department of</p> <p>5 Safety --</p> <p>6 A. No. There aren't two things, there are</p> <p>7 1,400 things. What I can't give you is all 1,400</p> <p>8 agencies' variations -- iterations --</p> <p>9 Q. I don't want all 1,400, I want your --</p> <p>10 A. I can give you what I think you want,</p> <p>11 which is the core -- the foundational policy.</p> <p>12 Q. Yeah, and that's it.</p> <p>13 A. Okay.</p> <p>14 Q. Your recommended policy with these various</p> <p>15 questions that agencies ask themselves if they're</p> <p>16 going to alter the policies.</p> <p>17 A. I can't provide -- I can't provide the</p> <p>18 guide sheet to you, because I'm not the guy that</p> <p>19 writes it, and I don't own the --</p> <p>20 MR. WEISENFELDER: There may be</p> <p>21 proprietary interests involved here --</p> <p>22 A. But I can give you the policy, itself.</p> <p>23 Q. Okay. And I can refer to that as either</p> <p>24 the Lexipol manual of best practices?</p> <p>25 A. Yes. But, again, just that one -- I want</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. Okay. If I'm understanding, your</p> <p>2 recommended or your ideal policy is you would create</p> <p>3 a policy.</p> <p>4 A. Yes.</p> <p>5 Q. Okay. For K9 usage.</p> <p>6 A. Ideal is a strong word, but yeah.</p> <p>7 Recommended is a better word.</p> <p>8 Q. Okay. What other K9-related experience do</p> <p>9 you have, either in formulating policy or otherwise,</p> <p>10 other than what we've discussed already?</p> <p>11 A. Well, I've spent hours and hours and hours</p> <p>12 and tedious hours this summer, that could have been</p> <p>13 better spent on the back of a Harley-Davidson</p> <p>14 motorcycle, writing a second edition to the K9</p> <p>15 officer's legal handbook.</p> <p>16 Q. And that is the book that you authored?</p> <p>17 A. That's one of the books I've authored.</p> <p>18 Q. Your prior edition, would that have been</p> <p>19 current for the time periods of the Campbell and</p> <p>20 Gemperline bites, meaning the information contained</p> <p>21 in that book, would that have been the appropriate</p> <p>22 version to have been in place during those bites?</p> <p>23 A. May I?</p> <p>24 Q. Yes.</p> <p>25 A. Is it listed in here, do you remember?</p>
<p style="text-align: right;">Page 91</p> <p>1 to stress there are --</p> <p>2 Q. For K9 --</p> <p>3 A. Right. Hundreds of policies in there that</p> <p>4 I don't really touch.</p> <p>5 Q. And then the Utah Department of Safety --</p> <p>6 A. The Utah Department of Public Safety K9</p> <p>7 policy is one example of an unaltered K9 policy</p> <p>8 produced by Lexipol.</p> <p>9 Q. Okay.</p> <p>10 A. So, if I give you that document, which is</p> <p>11 a public document because it's now been purchased by</p> <p>12 the state. And the state can't -- under our state</p> <p>13 rules, probably the same here, if you ask for it you</p> <p>14 get it. I mean --</p> <p>15 MR. WEISENFELDER: General public records</p> <p>16 request --</p> <p>17 A. I could make you jump through a bunch of</p> <p>18 hoops. What I'm telling you is, I won't. What I</p> <p>19 will do is I will get that document to you. It will</p> <p>20 then represent to you my work product in</p> <p>21 collaboration with others.</p> <p>22 Q. That's the policy --</p> <p>23 A. That's what I think you want is a policy.</p> <p>24 Q. -- that you developed.</p> <p>25 A. And that I -- yes.</p>	<p style="text-align: right;">Page 93</p> <p>1 Oh, yes. I couldn't remember when it was published.</p> <p>2 Yes, it would. Yes.</p> <p>3 Q. Meaning the book I'm holding up in front</p> <p>4 of me here?</p> <p>5 A. Yes.</p> <p>6 Q. See, you sold one.</p> <p>7 A. Thank you.</p> <p>8 Q. To a non-law enforcement officer, which I</p> <p>9 guess leads into my next question. Your work as an</p> <p>10 expert witness, how many cases do you review a year,</p> <p>11 approximately, in your work as a paid expert</p> <p>12 witness?</p> <p>13 A. By reviewed do you mean accept, write a</p> <p>14 report on?</p> <p>15 Q. Offer an opinion on, either in writing or</p> <p>16 orally? Meaning, how many times do attorneys pick</p> <p>17 up the phone, give you a call, or a municipality</p> <p>18 gives you a call and says, Mr. Wallentine, we've got</p> <p>19 a case we'd like you to look at and give us an</p> <p>20 opinion on. Can we send you the file and understand</p> <p>21 that you're going to charge us for your time and</p> <p>22 effort in reviewing the matter?</p> <p>23 A. Certainly it varies, but three to four per</p> <p>24 year that I actually work through. There are others</p> <p>25 that I may not agree to work through.</p>

1 Q. And for how long have you been offering
2 your services as an expert witness?

3 A. Approximately 13, maybe 14 years.

4 Q. Okay. And in reviewing some of the cases
5 that you listed that you've been involved in
6 previously, approximately how many of those have
7 been for the defense or representing the officer in
8 the context of a civil case have you testified for
9 versus the plaintiff, or the injured party or
10 suspect as we refer to it?

11 A. Of the cases listed here, there is one
12 case where I served as the expert witness for the
13 plaintiff. Another case where I served as an expert
14 witness testifying against the officer, but
15 representing -- or serving for a co-defendant.
16 That's it.

17 Q. And in that one case where you were
18 testifying against the officer as an expert, can you
19 give me the basic facts of that case and tell me
20 what it was about and the name of the case?

21 A. Yes. There were actually two where I
22 testified against the officer, but in one they were
23 co-defendants. In the Nielson case versus South
24 Salt Lake City and Burnham, Ms. Nielson was sexually
25 assaulted by a police officer. She was a juvenile

1 bitten in the front of the neck. So he was bitten
2 with a crushing and tearing bite to his larynx,
3 which significantly impaired his already impaired
4 larynx and his ability to speak. I believe there
5 may have been a secondary infection, as well. I
6 don't recall.

7 Q. Do you still have a copy of the report
8 that you issued in that case?

9 A. I don't know if I do or not, because this
10 is -- I think that one has now dropped off the
11 four-year look-back window of Rule 26, so I may not.

12 Q. Okay.

13 A. I suspect that --

14 Q. And I'll tell you what, I'm going to go --

15 A. I think you can find it. If I don't have
16 it, I think you can find it on Westlaw, because
17 that's a case that went up to the Eleventh Circuit.
18 2008, I might, I don't know, sir.

19 Q. I'm going to go ahead and make a request
20 for a copy of that report if you do have it,
21 otherwise I will try and obtain it through other
22 means.

23 MR. WEISENFELDER: Put that in the
24 letter, too.

25 MR. BRANNON: I'll put that in the letter

1 who had been consuming alcohol. The officer picked
2 her up, took her to his home. I believe she passed
3 out. That's what I believe happened. There was
4 some question as to whether she passed out.

5 And when she became fully conscious of her
6 surroundings, she found the officer was engaged in a
7 sexual act with her. And he was terminated. And I
8 testified as to the wrongfulness of his conduct.

9 Q. Had nothing to do with K9s?

10 A. It did not.

11 Q. How about the other case?

12 A. The other case is Trammell versus
13 Jacksonville Beach City Police Department, and in
14 that case I testified on behalf of Mr. Trammell as
15 the plaintiff in that case. It was a case where he
16 was bitten in the throat by a police service dog in
17 the course of a track of a suspect.

18 Q. And in that Trammell case, what were the
19 injuries sustained by the suspect, or Mr. Trammell,
20 I guess?

21 A. The injuries were fairly significant.
22 He's what a law professor would find as an eggshell
23 plaintiff, or at least he was at the time.
24 Mr. Trammell had had laryngeal cancer. So he had a
25 compromised esophageal laryngeal tract. And he was

1 with --

2 A. I can let you know that in fairly short
3 order. And again, if I don't have it, I'm pretty
4 sure you can find it.

5 Q. Okay. Do you know who Wendell Nope is?

6 A. I do.

7 Q. Who is Wendell Nope?

8 A. Wendell Nope is a sergeant with the Utah
9 Department of Public Safety, and he is my former
10 employee.

11 Q. Okay.

12 A. And occasional -- someone that still does
13 work for me from time to time.

14 Q. Okay. Were you his direct supervisor
15 then?

16 A. I was.

17 Q. And where was that at?

18 A. Utah POST.

19 Q. Utah POST. Okay. And he was the one in
20 charge of the training program there?

21 A. He was then, and is today.

22 Q. Okay. And in your report you stated that
23 you're the author of police academy curriculum use
24 of force in police service dog teams, search-seizure
25 dog teams, that sort of thing. What's that

1 referring to, specifically?

2 A. The curriculum that was and I think some
3 of it still is presented at the Utah police academy
4 in the basic handler training courses and in the
5 supervisory courses.

6 Q. Okay. So that was part of the courses
7 that you developed, or that were developed by the
8 training section that you would then approve?

9 A. Yes. I don't want to give you the
10 impression that I created those when I went there.
11 There was a form of that course created prior to my
12 being there, and it went through revision when I was
13 the supervisor.

14 Q. Okay. And when it says you regularly
15 teach POST patrol dog handler courses, you don't
16 teach officers how to utilize their dogs; am I
17 correct in that?

18 A. That's correct.

19 Q. Okay. Yours is mainly -- pertains to
20 search and seizure, legal issues, given your
21 background?

22 A. Search and seizure, the appropriate
23 perimeters for deploying a dog that -- the legal
24 issues and the civil rights issues surrounding
25 police service dog teams.

1 Q. Okay. So we'd encompass it under the term
2 legal issues, then pertaining to K9 use and
3 deployment?

4 A. I think that's fair.

5 Q. Okay. Which I differentiate from -- let's
6 see if you agree with me on this, from actual
7 training of K9s, K9 activity in the field, meaning
8 how a dog acts, reacts, things of that nature?

9 A. That's fair.

10 Q. Okay. And just so I'm clear, when you
11 were with the sheriff's office and actually had
12 Monty as a dog, he was not -- he was a certified
13 patrol dog, not just a search and rescue dog or
14 something like that, correct?

15 A. He was -- that's true.

16 Q. Okay. Anything else that you do that's
17 related to police K9s?

18 A. Not that I consider to be of great
19 significance or import. I occasionally -- at least
20 once a year I'll go to California and participate in
21 a week-long seminar as an instructor. Occasionally,
22 I'll do others, not often. I don't -- I don't like
23 to travel near as much -- I dislike traveling more
24 today than I did ten years ago, let me put it that
25 way.

1 Q. I'm going to hand you -- and these are the
2 originals that I pulled out of your file, just some
3 documents, and most of it is correspondence that
4 looks like between yourself and Mr. Weisenfelder.

5 MR. WEISENFELDER: Are you marking this
6 as Two?

7 MR. BRANNON: Yeah, let's mark that.
8 (PLAINTIFFS' EXHIBIT TWO WAS MARKED FOR THE RECORD)

9 Q. Just for purposes of the record, can you
10 identify that for me and verify that those are
11 records of information that you had contained in
12 your file, and --

13 A. This appears to be a -- I haven't looked
14 at these documents for quite some time, but I
15 believe that they all came from my file.

16 Q. Are you a member of any organization or
17 group, specifically pertaining to any K9 activity or
18 association?

19 A. I am.

20 Q. And which associations or groups are you a
21 part of?

22 A. I'm currently active in the California
23 Narcotic and Explosive Detector Dog Association.

24 Q. And seeing how that's out of state, what
25 is your capacity with them, or are you just a member

1 where you've paid your membership fees this year and
2 you're in the group?

3 A. I do instruction for them. Out of state
4 is true, although it's a bit of a misnomer. It
5 started in California, but the organization's active
6 in six or seven western states. It's a
7 certification organization, primarily.

8 Q. Talking about the training for Spike
9 earlier, you've had an opportunity to review the
10 training records for Spike as part of this case,
11 correct?

12 A. I've seen a number of training records
13 that have been produced to me.

14 Q. Okay. Based upon your review of those
15 records, do you believe that Spike was initially
16 trained as a bark-and-hold dog or a bite-and-hold
17 dog?

18 A. It's my understanding that his training
19 resulted in him being treated as a bite-and-hold
20 dog.

21 Q. Okay. Resulted in him being a
22 bite-and-hold dog. Was that when Spike was
23 initially purchased, in your opinion, or not, or
24 acquired?

25 A. When Spike was initially acquired, he was

<p style="text-align: right;">Page 102</p> <p>1 acquired to be what I believe we have all agreed on</p> <p>2 for the definition of bark-and-hold or</p> <p>3 guard-and-bark dog.</p> <p>4 Q. Okay. And at some point, it's your belief</p> <p>5 then that he was transitioned through training or</p> <p>6 otherwise to become a bite-and-hold dog?</p> <p>7 A. In the majority of his deployments, they</p> <p>8 were deployments that were more consistent with the</p> <p>9 behavior of a bite-and-hold dog.</p> <p>10 Q. Okay. Meaning the -- I'm just asking you</p> <p>11 based upon your review of the training records. I</p> <p>12 just want to make sure we're talking apples to</p> <p>13 apples here. When you say when you reviewed his</p> <p>14 deployment records, these would have been the -- the</p> <p>15 deployment records would have included the use of</p> <p>16 force incidents that Officer Clark would have filled</p> <p>17 out pertaining to when he would have deployed his</p> <p>18 dog in the field, correct?</p> <p>19 A. Correct.</p> <p>20 Q. So based upon your review of those</p> <p>21 deployment records, it led you to believe, based</p> <p>22 upon your knowledge, training, experience, that</p> <p>23 Spike was a bite-and-hold dog?</p> <p>24 A. In those circumstances that I reviewed, he</p> <p>25 performed as I would expect a bite-and-hold dog, and</p>	<p style="text-align: right;">Page 104</p> <p>1 incidents involving Spike that involved biting a</p> <p>2 suspect, do you agree with that, in the time that he</p> <p>3 was deployed in the field?</p> <p>4 MR. WEISENFELDER: Objection. Go ahead.</p> <p>5 A. I believe that to be accurate. Without</p> <p>6 going back and looking through the file in some</p> <p>7 detail, I couldn't tell you that that's accurate.</p> <p>8 Q. Does that strike you as a high number of</p> <p>9 bite incidents involving a K9 in a relatively small</p> <p>10 department?</p> <p>11 MR. WEISENFELDER: Objection. Go ahead.</p> <p>12 A. Well, there are a lot of variables assumed</p> <p>13 in your question, so, no.</p> <p>14 Q. Okay. Meaning, you operated a K9 for</p> <p>15 what, five years, roughly, which was a bite-and-hold</p> <p>16 dog, and had zero suspects bitten with you as the</p> <p>17 handler of that K9, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Yet in a smaller time period, Officer</p> <p>20 Clark had over ten suspects bitten. That doesn't</p> <p>21 cause you any concern as somebody who would be</p> <p>22 reviewing this case file for either an improperly</p> <p>23 performing dog or improperly performing or trained</p> <p>24 handler?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 103</p> <p>1 perhaps even a bark-and-hold to behave.</p> <p>2 Q. Why did you believe that he performed as a</p> <p>3 bite-and-hold dog?</p> <p>4 A. At the end of the -- at the end of the</p> <p>5 trail, so to speak, the persons were bitten.</p> <p>6 Q. Meaning at the end of a track, or when a</p> <p>7 suspect was found?</p> <p>8 A. At the end of a search activity.</p> <p>9 Q. Okay. And that would be consistent with a</p> <p>10 bite-and-hold dog?</p> <p>11 A. Could be consistent with a bark-and-hold</p> <p>12 dog.</p> <p>13 Q. For it to be consistent with a</p> <p>14 bark-and-hold dog, that would have meant at the end</p> <p>15 of a track the suspect would have made some type of</p> <p>16 furtive movement or attempted to escape or attack</p> <p>17 the officer, or something of that nature, correct?</p> <p>18 A. It means that the suspect would have made</p> <p>19 some kind of movement, some kind of behavior that</p> <p>20 triggered the dog to engage in a bite.</p> <p>21 Q. Okay. How many deployment incidents did</p> <p>22 you review for Spike that resulted in a person being</p> <p>23 bitten?</p> <p>24 A. I don't recall.</p> <p>25 Q. More than -- there were more than ten</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. WEISENFELDER: Objection. Go ahead.</p> <p>2 Q. Is that to say that past performance of a</p> <p>3 K9 unit is not a good predictor of future</p> <p>4 performance?</p> <p>5 A. No.</p> <p>6 Q. It's not?</p> <p>7 A. Well, with all due respect, an English</p> <p>8 teacher would not have approved of your question.</p> <p>9 Q. Never did very well in English, so I'll --</p> <p>10 let me try another one here.</p> <p>11 A. It is not to say -- you had a double</p> <p>12 negative there. Past performance is often an</p> <p>13 indicator of future performance.</p> <p>14 Q. Okay. So you would agree with me then</p> <p>15 that past performance is a good indicator of how a</p> <p>16 dog or animal will behave in the future,</p> <p>17 particularly a K9?</p> <p>18 MR. WEISENFELDER: Objection. Go ahead.</p> <p>19 A. It can be.</p> <p>20 Q. Unless there is some type of intervention</p> <p>21 for a K9, is it more likely than not that that</p> <p>22 conduct or activity will continue, will be</p> <p>23 consistent --</p> <p>24 MR. WEISENFELDER: Objection.</p> <p>25 Q. -- as it pertains to a K9 unit?</p>

<p style="text-align: right;">Page 106</p> <p>1 MR. WEISENFELDER: Objection. Go ahead.</p> <p>2 A. It's more likely than not that a dog in</p> <p>3 the same set of circumstances and same stimulant --</p> <p>4 stimulus will perform consistent with past behavior</p> <p>5 in future circumstances, if there is no intervening</p> <p>6 training or you used the word intervention, that's</p> <p>7 true.</p> <p>8 Q. Okay. Meaning to put this into context,</p> <p>9 if a bark-and-hold trained dog, instead of barking</p> <p>10 at a suspect bites that suspect, let's say three</p> <p>11 times, one would expect the fourth time that a</p> <p>12 bark-and-hold dog encounters a suspect, unless that</p> <p>13 dog would have received some type of additional</p> <p>14 training or corrective behavior, that it would be</p> <p>15 more likely than not that that bark-and-hold trained</p> <p>16 K9 would bite the fourth suspect, correct?</p> <p>17 MR. WEISENFELDER: Objection. Go ahead.</p> <p>18 A. Again, I don't know whether there are</p> <p>19 other, but at least in our world in law enforcement,</p> <p>20 the kind of circumstances that these service dogs</p> <p>21 are deployed in, they vary significantly. So if you</p> <p>22 were to say in your question controlling for all</p> <p>23 variables, and use the answer that I gave you a</p> <p>24 minute ago in three prior cases to which you</p> <p>25 referred to, if all those circumstances were the</p>	<p style="text-align: right;">Page 108</p> <p>1 from an electronic control device, a supervisor</p> <p>2 should be looking at that incident.</p> <p>3 Q. Okay. And I'm asking specifically though</p> <p>4 to K9 units. Are consistent bites from a</p> <p>5 bark-and-hold -- what's supposed to be a</p> <p>6 bark-and-hold trained dog, should that be a glaring</p> <p>7 red flag to a supervisor of a K9 unit?</p> <p>8 MR. WEISENFELDER: Objection. Go ahead.</p> <p>9 A. Each one of those bites should be reviewed</p> <p>10 by the supervisor with great care.</p> <p>11 Q. And if the supervisor finds that a</p> <p>12 bark-and-hold dog is consistently biting a suspect</p> <p>13 without any furtive movements or gestures as we've</p> <p>14 described it for a bark-and-hold dog, should action</p> <p>15 be taken by that supervisor or the agency in total</p> <p>16 to correct that action --</p> <p>17 MR. WEISENFELDER: Objection. Go ahead.</p> <p>18 Q. -- in your opinion?</p> <p>19 A. If a supervisor finds that a dog is biting</p> <p>20 suspects under circumstances where there is not an</p> <p>21 appropriate stimulus for the dog to engage in a</p> <p>22 bite, whether it's one bite or ten, the supervisor</p> <p>23 should be looking at that and taking some action to</p> <p>24 remediate.</p> <p>25 Q. Is the proper action to take that dog out</p>
<p style="text-align: right;">Page 107</p> <p>1 same and there was no intervening training and no</p> <p>2 intervening command, and the circumstances were</p> <p>3 replicated, then, yes, I think the fact that the dog</p> <p>4 has bitten someone three prior times under identical</p> <p>5 circumstances, that's an indicator that there's</p> <p>6 likely going to be a bite again.</p> <p>7 Q. In your opinion, based upon your</p> <p>8 knowledge, training and experience, are those traits</p> <p>9 something that a supervisor should be looking for</p> <p>10 when monitoring a K9 unit?</p> <p>11 MR. WEISENFELDER: Objection. Go ahead.</p> <p>12 A. What traits?</p> <p>13 Q. Meaning bites occurring with a</p> <p>14 bark-and-hold dog, consistent bites?</p> <p>15 A. I think that a supervisor supervising a K9</p> <p>16 unit or any police unit should be looking at uses of</p> <p>17 force. I think the answer to that has to be yes.</p> <p>18 Q. Okay. Meaning that if a bark-and-hold</p> <p>19 trained dog is consistently biting suspects, that</p> <p>20 should alert or be a red flag to supervisors of that</p> <p>21 K9 unit, correct?</p> <p>22 A. Meaning that every time a dog bites</p> <p>23 someone, every time someone's struck with a baton,</p> <p>24 every time someone is sprayed with pepper spray,</p> <p>25 every time someone receives a current of electricity</p>	<p style="text-align: right;">Page 109</p> <p>1 of service until that handler and dog team can</p> <p>2 demonstrate performance to professionally accepted</p> <p>3 levels?</p> <p>4 A. Lots of variables involved, but that</p> <p>5 certainly could be one within the array of options.</p> <p>6 That could be one that an agency might take.</p> <p>7 Q. What are some of the other options that an</p> <p>8 agency might take in that circumstance?</p> <p>9 A. It depends on what is determined to be the</p> <p>10 stimulus, the cause for the bite.</p> <p>11 Q. Let's say there is no stimulus. That the</p> <p>12 suspect is just standing there. Besides taking the</p> <p>13 dog team out of service until some corrective</p> <p>14 training can occur, what other options are available</p> <p>15 to that department?</p> <p>16 A. So as I understand it, your hypothetical</p> <p>17 is that the dog engages in a bite and there is no --</p> <p>18 no plausible explanation for the dog's behavior and</p> <p>19 the bite is inconsistent with the dog's training,</p> <p>20 then taking the dog out of service certainly is --</p> <p>21 and providing remediation training certainly is one</p> <p>22 option. Another option is to conduct further</p> <p>23 investigation with respect to the handler, bring</p> <p>24 someone in that's qualified to evaluate the dog and</p> <p>25 the dog's performance in tandem with the handler,</p>

<p style="text-align: right;">Page 110</p> <p>1 and tell the department that we think taking the dog 2 out of service is not necessary or we think that 3 taking the dog out of service and providing these 4 particular steps and remedial training is necessary. 5 Let's see, I think your question is to try and give 6 you the realm of possibilities. 7 Another possibility would be taking that 8 dog team or inviting a credentialed assessor to come 9 in and take a look at the dog team and determine 10 whether there was an issue or whether there had 11 simply been an aberration as described in your 12 hypothetical. There may be others. Those steps 13 come to mind as I sit here today. 14 Q. Okay. So can we agree then that just 15 because a dog team is certified by the state or a 16 state agency, meaning OPOTA here in Ohio or POST out 17 there in Utah, that that does not necessarily mean 18 that that dog team should be deployed in the field? 19 A. Well, it's certainly a very strong 20 indicator that qualified and credentialed evaluators 21 have made the determination that the dog is 22 appropriate -- the dog team is appropriate to deploy 23 in the field. But there may be intervening factors 24 that contraindicate that the dog should be deployed 25 in the field.</p>	<p style="text-align: right;">Page 112</p> <p>1 opinion, would not be accurate. 2 If you were in a state, for example, that 3 had no state standards, does that mean that -- the 4 way you posed your hypothetical, it would suggest 5 that the dog need meet no criteria before deploying 6 on the street, and I just could not accept that as 7 being appropriate. 8 Q. Okay. Well, let me -- perhaps it was a 9 poor question on my part. And let me be more 10 specific since this is an Ohio case and dealing with 11 the Ohio standards through OPOTA. Would you agree 12 with me that the state certification is the minimum 13 performance standard that a K9 team must meet before 14 being deployed in the State of Ohio? 15 MR. WEISENFELDER: Objection. Go ahead. 16 A. I would agree that the dog must be -- if 17 the dog is certified to OPOTA standards, that the 18 dog must meet those standards at the time of the 19 certification. My understanding of the 20 administrative code or administrative procedures 21 here, I can't remember what it's called, is that 22 it's not required by the state for that dog to 23 maintain that certification beyond the initial 24 certifying period. 25 Q. Meaning the certification here in Ohio</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. And one of those contraindicating factors 2 would be if the supervisor were to determine that a 3 dog isn't operating to professionally performing 4 levels; would that be fair to say? 5 A. That's certainly within the realm of 6 possibilities, yes. 7 Q. Can we agree then that the state 8 certification for a K9 team, either through OPOTA or 9 POST or otherwise, that's the minimum accepted level 10 of performance to deploy a dog in that particular 11 state? 12 MR. WEISENFELDER: Objection. Go ahead. 13 A. I don't know that that's accurate. It may 14 be -- that may be true, but I don't know that that's 15 accurate. 16 Q. Okay. And you're the expert. If it's not 17 accurate, please correct me and tell me what would 18 not be accurate about that statement. 19 A. Well, broadly speaking, there are many 20 states, and you mentioned a couple of them, where 21 certification by the state is not absolutely 22 mandatory for the dog to be deployed on the street. 23 In fact, it's a relatively small minority of states 24 that have any state standards at all. So to say 25 that that's the minimum standard may not -- in my</p>	<p style="text-align: right;">Page 113</p> <p>1 would be issued for, let's say, an initial period of 2 two years. Is it your understanding then that that 3 dog team would not have to be recertified 4 subsequently to that first two-year period? 5 A. My understanding is that recertification 6 is not mandatory here. I may be mistaken, but 7 that's my understanding. 8 Q. Okay. And regardless, those minimum 9 standards set forth by OPOTA here in Ohio doesn't 10 necessarily mean that each individual department 11 should deploy that team in the field, correct? 12 MR. WEISENFELDER: Objection. Go ahead. 13 Q. Just because they passed that class with 14 OPOTA doesn't mean that they should deploy them in 15 the field, correct? 16 A. Not necessarily. 17 Q. Okay. Would you agree with me that it is 18 then up to each department who has that K9 unit 19 handler team to determine whether or not their dog 20 is suitable for deployment in the fields -- in the 21 field based upon their particular agency's needs? 22 A. I would agree that the primary 23 responsibility for determining whether the dog is 24 suitable for deployment in the field rests with the 25 department.</p>

1 Q. And they make that decision based upon the
2 policies and procedures that they have in place,
3 correct?

4 A. That would be one factor.

5 Q. What are the other factors?

6 A. It may be factors entirely unrelated to
7 the policies. Such as dogs can get sick, dogs can
8 develop disease, dogs can develop disabilities that
9 may -- there may not be anything in the policy about
10 that. The dog in my home -- one of the dog teams in
11 my hometown, for example, right now is suffering
12 from hip dysplasia. And some folks are out trying
13 to raise money for a corrective medical procedure.
14 That dog should not be out on the street until
15 medical veterinary officials clear him to return to
16 the street. That may not be discussed in policy.
17 Dogs can get colds, actually, dogs can get a
18 flu-like illness. Handlers don't always recognize
19 that. One would hope that they do, but a dog that
20 has a cold is often a dog that is not particularly
21 effective at search for the odors in controlled
22 substances, or the odors of people in hiding. So
23 that may be a circumstance.

24 It may be that the handler is sick, or it
25 may be that the handler has worked -- I don't know

1 about Ohio, but at my agency we have requirements
2 about the maximum number of hours an officer can
3 work in any, I think it's a week period.
4 Recognizing that people diminish -- people's
5 performance diminishes with a number of hours. Or
6 it could be other factors, but not every factor is
7 going to be discussed in the policy manual.

8 Q. Can we agree that one of the factors that
9 would weigh against deploying a K9 team in the field
10 would be repetitive complaints from a handler
11 stating that he needed more training, or he wasn't
12 getting enough training for his K9 unit?

13 A. That certainly should be something that an
14 agency would be taking a very careful look at.

15 Q. Meaning if that was ignored by an agency,
16 that's something that should not be ignored by an
17 agency?

18 A. I'm not sure what you mean by ignored.

19 Q. Ignored or disregarded?

20 A. Yeah --

21 Q. Blown off?

22 A. I don't -- yeah, and I don't know exactly
23 what that means, but it certainly -- certainly an
24 agency should be attentive to a handler raising
25 concerns about the training time available to the

1 handler.

2 Q. Meaning that's another one of those, as
3 I've described it, a red flag item, that's a warning
4 to supervisors?

5 MR. WEISENFELDER: Objection. Go ahead.

6 A. It could be, but it also could be that
7 you've got a handler who doesn't like to work on the
8 street and likes to have training time in controlled
9 environments, or enjoys -- being one handler who
10 wanted to go to training more frequently because he
11 had a romantic interest in one of the other dog
12 handlers. There could be other reasons. It didn't
13 work out so well.

14 Q. One thing I didn't ask you about was your
15 work as a consultant to the Utah Risk Management and
16 Mutual Association.

17 A. URMA.

18 Q. And is that Utah's largest insurer of
19 police departments?

20 A. It was then, and I believe it still is
21 today.

22 Q. What do you do for them?

23 A. There are times when their adjusters will
24 call to discuss a case that may have resulted in
25 litigation. And we can have a discussion about

1 whether the case should be settled or whether
2 litigation should be defended. There are times that
3 they will actually hire me to be the expert in cases
4 that they -- where they undertake the defense. And
5 occasionally they'll hire me to do training. It's
6 more frequent though that their principal adjuster
7 will call and say, look, I need to review a case
8 with you and let's talk about whether this was one
9 that we ought to fight or ought to just write a
10 check.

11 Q. Okay. And in regards to this particular
12 case, have you had discussions with anybody about,
13 as you've described it, whether or not you should
14 fight or just write a check?

15 A. No.

16 Q. You've had zero discussions with
17 Mr. Weisenfelder or any other adjuster regarding
18 whether or not this case should be settled, or why
19 it's continuing in litigation?

20 MR. WEISENFELDER: Objection.

21 A. I don't -- if this case is -- I'm not even
22 sure that there is an insurance company involved
23 here, so I -- I certainly haven't had any discussion
24 with any insurance adjuster here. And that's
25 something I typically would not do, other than for

<p style="text-align: right;">Page 118</p> <p>1 the folks that hired me to do it. In this case, I</p> <p>2 certainly have talked to Mr. Weisenfelder about what</p> <p>3 I think the defensible strengths are and how</p> <p>4 different issues are best addressed.</p> <p>5 Q. So you've --</p> <p>6 A. I've not told anyone to write a check, nor</p> <p>7 has anyone asked me. I'll tell you to write me a</p> <p>8 check when we're done.</p> <p>9 Q. If we can, let's go to your report. I</p> <p>10 want to go through, and if anybody needs to take a</p> <p>11 break we can.</p> <p>12 MR. WEISENFELDER: How much longer do you</p> <p>13 think?</p> <p>14 MR. BRANNON: I'm going to ask him some</p> <p>15 questions about his report and some of the opinions</p> <p>16 in there, so let me just take a quick five minutes.</p> <p>17 (OFF THE RECORD)</p> <p>18 BY MR. BRANNON:</p> <p>19 Q. I told you we were going to talk about</p> <p>20 your report. I'm going to shift a little bit and</p> <p>21 ask you some questions. And this is out of your</p> <p>22 book. I wanted to know what your understanding of</p> <p>23 the term positive control means, when pertaining to</p> <p>24 a K9 on a lead? What is positive control?</p> <p>25 A. A handler has control over the volitional</p>	<p style="text-align: right;">Page 120</p> <p>1 A. Those answers could differ slightly in a</p> <p>2 narcotics context.</p> <p>3 Q. Okay. I would like your answers then</p> <p>4 to -- let's just focus on the facts dealing with</p> <p>5 this case were -- we call that a patrol context?</p> <p>6 A. Yes. And that's what I understood that</p> <p>7 you were asking. I just wanted to be clear.</p> <p>8 Q. And that was, in fact, what I was asking.</p> <p>9 So that being said, any change to your answers --</p> <p>10 A. No.</p> <p>11 Q. -- knowing all my questions were patrol</p> <p>12 context specific?</p> <p>13 A. No.</p> <p>14 Q. And would you agree that in a patrol</p> <p>15 context that a K9 officer should be in control of</p> <p>16 his dog at all times?</p> <p>17 A. Generally speaking, yes.</p> <p>18 Q. And that where a patrol officer is not in</p> <p>19 control of his K9, that he's not the one making the</p> <p>20 use of force decisions any longer?</p> <p>21 A. I'm sorry. I don't -- I'm not sure I</p> <p>22 heard that correctly.</p> <p>23 Q. Yeah, meaning that where a K9 officer does</p> <p>24 not control, or cannot or does not have control of</p> <p>25 his dog in a patrol context, that that officer is</p>
<p style="text-align: right;">Page 119</p> <p>1 behavior of the dog.</p> <p>2 Q. Okay. And you used a word in there to</p> <p>3 describe the control. Is that to say that the</p> <p>4 handler with positive control can control what the</p> <p>5 dog will and will not do?</p> <p>6 A. Generally speaking, yes.</p> <p>7 Q. Okay. And would you agree with me that</p> <p>8 handler control is essential in stopping a dog</p> <p>9 before a bite occurs?</p> <p>10 A. Yes. And I just -- I don't know that this</p> <p>11 matters to you, but the answers in a narcotics</p> <p>12 detection case would be somewhat different, but in</p> <p>13 this context, yes.</p> <p>14 Q. Okay. And I understand in a narcotics</p> <p>15 context, which this is not, you know, it's sometimes</p> <p>16 necessary to give the dog a little bit more free</p> <p>17 rein to sniff out contraband.</p> <p>18 A. That's correct. But when you say control</p> <p>19 over what the dog does or doesn't do in a narcotics</p> <p>20 context, you're looking for different changes in</p> <p>21 behavior so you don't want to control; for example,</p> <p>22 the dog maybe tried to get under a car,</p> <p>23 scratching -- going up on a car which may scratch</p> <p>24 the car that you may later have to pay for.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 121</p> <p>1 then no longer making any decisions regarding use of</p> <p>2 force?</p> <p>3 A. The officer is not making certain</p> <p>4 decisions regarding use of force. I don't know that</p> <p>5 it's accurate to say the officer is making no</p> <p>6 decisions.</p> <p>7 Q. Okay. And then define that a little bit</p> <p>8 further for me since you discuss that topic area in</p> <p>9 your book.</p> <p>10 A. If a handler does not have positive</p> <p>11 control over the dog, if the handler is not</p> <p>12 directing the dog's behavior, and the handler is</p> <p>13 not, I think you said, paying attention to the dog</p> <p>14 and the dog runs off and the handler doesn't see</p> <p>15 what the dog is doing, then obviously the handler is</p> <p>16 not engaging in the decision process with respect to</p> <p>17 the dog.</p> <p>18 A contrary wise example might be a dog</p> <p>19 behaving in an autonomic fashion. For example, I</p> <p>20 can think of one case where at a rodeo dance an</p> <p>21 intoxicated rodeo queen dressed in her fine attire</p> <p>22 in a large crowd with a lot of drinking folks and a</p> <p>23 lot of noise and a big loud country western band</p> <p>24 walked up to a service dog handler and the service</p> <p>25 dog handler was paying attention to many things that</p>

<p style="text-align: right;">Page 122</p> <p>1 were demanding his attention as a police officer and</p> <p>2 didn't see this somewhat loopy rodeo queen reach</p> <p>3 down to pet his dog. The dog and the woman -- do</p> <p>4 you have a dog? You do, you have setters, right?</p> <p>5 Q. Yeah.</p> <p>6 A. The woman came in with an open hand from</p> <p>7 above into the dog's face to pet the dog. Most any</p> <p>8 dog, particularly a trained police service dog is</p> <p>9 going to interpret that as an aggressive move, and</p> <p>10 it resulted in a torn satin blouse. So, in that</p> <p>11 case, the officer wasn't making a use of force</p> <p>12 decision with respect to the dog, because the</p> <p>13 officer wasn't paying attention to the dog.</p> <p>14 Q. Should the officer be making all of the</p> <p>15 use of force decisions in the context of a K9 with</p> <p>16 what his dog will or will not do regarding the use</p> <p>17 of force? Meaning that's not something that's</p> <p>18 typically left up for the dog to decide?</p> <p>19 A. At some point. There may be context in</p> <p>20 which -- there may be context in which the handler</p> <p>21 makes the decision to remove himself from that</p> <p>22 decision-making process or decision making</p> <p>23 opportunity. For example, I gave you earlier the</p> <p>24 example of a building search at a warehouse where</p> <p>25 the handler gives a warning -- this is the Salt Lake</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. And it looks like we get to Page 8 --</p> <p>2 A. 8 --</p> <p>3 Q. -- number 9(a) is the first opinion that</p> <p>4 you offer, the use of police service dog Spike to</p> <p>5 track and attempt to locate Chelsie Gemperline after</p> <p>6 she escaped from custody was reasonable and</p> <p>7 comported with generally accepted police service dog</p> <p>8 standards.</p> <p>9 A. Yes.</p> <p>10 Q. And what is your basis for making that</p> <p>11 opinion?</p> <p>12 A. Well, the situation with Gemperline arises</p> <p>13 really from a couple of different, if you will,</p> <p>14 reasons for deploying the police service dog in this</p> <p>15 case to track her and try and find her. So dealing</p> <p>16 with them separately, first you have the issue of</p> <p>17 her criminality and escape. She was arrested for a</p> <p>18 relatively minor charge. I don't remember the -- it</p> <p>19 was like a minor -- in Utah we call it a minor in</p> <p>20 possession, I don't know what you call it here, but</p> <p>21 it was an alcohol violation. Fairly minor,</p> <p>22 run-of-the-mill, misdemeanor charge that is soon</p> <p>23 compounded by her act of escape from custody which,</p> <p>24 at least in my home state, and I believe in Ohio as</p> <p>25 well, then elevated her status to that of being a</p>
<p style="text-align: right;">Page 123</p> <p>1 City Police Department -- we know you're in there.</p> <p>2 We have a police service dog, make yourself known or</p> <p>3 we'll send the dog in, you may be bitten. At that</p> <p>4 point the dog may be sent in. Because of the</p> <p>5 warehouse, it may not be advisable for officers to</p> <p>6 go in and search the warehouse. It just may not be</p> <p>7 a safe situation until it's been at least</p> <p>8 preliminarily cleared by the dog.</p> <p>9 The dog goes in, finds the suspect hiding.</p> <p>10 In this particular case I'm thinking about it was</p> <p>11 actually in a stack of suitcases of beer, large beer</p> <p>12 packs, and the suspect tried to scramble up and</p> <p>13 knocked a beer case down onto the dog's body</p> <p>14 somewhere, and the dog jumped up and bit the person.</p> <p>15 The handler, I guess wasn't involved in the use of</p> <p>16 force decision right at that moment, but it was</p> <p>17 still an appropriate deployment of the dog.</p> <p>18 Q. Okay. Let's take that then and go to your</p> <p>19 opinions that you offer in your report, and it looks</p> <p>20 like, and if I'm not mistaken, that no opinions are</p> <p>21 offered in the first seven pages of your report.</p> <p>22 A. I think that's correct. That's just the</p> <p>23 rules stuff about prior cases and so forth.</p> <p>24 Q. Yeah, your prior cases and your history.</p> <p>25 A. History and all that.</p>	<p style="text-align: right;">Page 125</p> <p>1 felony offender.</p> <p>2 So one has to take that into</p> <p>3 consideration, her criminality and her escape. And</p> <p>4 then put on it the additional factors that at the</p> <p>5 time she escaped the officers -- I believe that she</p> <p>6 was, and the officers believed that she was still</p> <p>7 wearing handcuffs. Now, whether she had slipped</p> <p>8 them to the front by then or not, I don't know. I</p> <p>9 don't know that anybody does know that. I don't</p> <p>10 know that she even ever said that or recalls it.</p> <p>11 Nonetheless, the officers have assumed custody and</p> <p>12 responsibility for this young woman. She's in</p> <p>13 handcuffs. She's physically impaired. She's got,</p> <p>14 one must assume based on the behavior as described</p> <p>15 and then that I think is bolstered by her later</p> <p>16 blood alcohol reading, one must assume that she's</p> <p>17 somewhat impaired, including her mobility is</p> <p>18 impaired by being handcuffed.</p> <p>19 And she's escaped into an area that at</p> <p>20 least one of the other people in this group had gone</p> <p>21 into a pond to hide. I don't know about this area,</p> <p>22 but anecdotally I'm aware of at least one other</p> <p>23 person who, when fleeing from police going into a</p> <p>24 pond and ultimately drowned. I mean, it happens.</p> <p>25 Q. Not in this state, correct? This is</p>

<p style="text-align: right;">Page 126</p> <p>1 you're talking --</p> <p>2 A. If it's happened in this state, then I</p> <p>3 don't know about it. But whether the officers knew</p> <p>4 that something like that had happened before or not,</p> <p>5 certainly it was foreseeable to them that she could</p> <p>6 fall into or go into the pond, that she could -- I</p> <p>7 think we all agree, and I think she agreed that she</p> <p>8 was intoxicated to some degree. You know, if she</p> <p>9 had seen the movie with Daniel Day-Lewis, The Last</p> <p>10 of the Mohicans, or read the book by James Fenimore</p> <p>11 Cooper and gone into a pond thinking that she could</p> <p>12 pluck up a cattail or a reed and breathe under the</p> <p>13 water, she may have formed that thought in her mind</p> <p>14 but been too drunk to do it.</p> <p>15 Now, granted, I don't know what was in her</p> <p>16 mind. I don't know what the officers were thinking</p> <p>17 other than the fact that they knew there was a pond</p> <p>18 there that posed a danger, a physical danger to her.</p> <p>19 An additional danger was the nature of the terrain.</p> <p>20 I haven't been to this location, I've never been to</p> <p>21 Springboro, that I know of. I may have ridden</p> <p>22 through it on my Harley when I came through here a</p> <p>23 couple years ago, but I don't think so.</p> <p>24 But in any event, I did look at the</p> <p>25 territory on a mapping program on the Internet and</p>	<p style="text-align: right;">Page 128</p> <p>1 the safety of Ms. Gemperline; is that a fair</p> <p>2 statement?</p> <p>3 A. It's a fair statement to say that was one</p> <p>4 of the considerations, yes. I didn't mean to imply</p> <p>5 that was the only reason.</p> <p>6 Q. Okay. Is it your belief or your opinion</p> <p>7 that this was a track for her safety or to track</p> <p>8 down a dangerous fugitive?</p> <p>9 MR. WEISENFELDER: Objection as to the</p> <p>10 form. Go ahead.</p> <p>11 A. I don't think I would ever characterize</p> <p>12 her as a dangerous fugitive. Strike that. I</p> <p>13 wouldn't characterize what she did here as saying</p> <p>14 that she's a dangerous fugitive.</p> <p>15 Q. Meaning within the context of the</p> <p>16 incident, itself, the underage drinking party, kids</p> <p>17 scattering from a residence, that's a typical</p> <p>18 reaction that you'd encounter if you were busting up</p> <p>19 an underage party, correct?</p> <p>20 A. Been there, done that. And she's not --</p> <p>21 based on the behavior they described, I mean, it's</p> <p>22 certainly -- I've been assaulted at such parties. I</p> <p>23 mean, I've been assaulted by teenagers who didn't</p> <p>24 want to be arrested. One that I remember didn't</p> <p>25 want to be arrested for much the same reason she</p>
<p style="text-align: right;">Page 127</p> <p>1 confirmed for my own mind that there are some ups</p> <p>2 and downs, gullies and ravines, places that she</p> <p>3 could fall. Again, the officers believed that she</p> <p>4 was handcuffed. She has no way to reach out and</p> <p>5 effectively break her fall if she should fall.</p> <p>6 She's at significant risk of hitting her head. All</p> <p>7 of that adds up to what I think Sgt. Zimmaro,</p> <p>8 whether it was at the scene or later said look, this</p> <p>9 is a young lady who we needed to find, and that's</p> <p>10 clearly true.</p> <p>11 So then we take a look at, well, what are</p> <p>12 the options available to us to find her effectively</p> <p>13 before she gets away, before she gets to a point</p> <p>14 that she could hurt herself? How can we quickly and</p> <p>15 effectively get her back into our custody? And one</p> <p>16 of the alternatives that was available to them was</p> <p>17 to use this police service dog they had there at the</p> <p>18 scene that was trained in tracking to go out and</p> <p>19 find, or do his best to find Chelsie Gemperline.</p> <p>20 Q. Any other basis for that opinion, other</p> <p>21 than what you've already explained?</p> <p>22 A. Let me just take a look here. I don't</p> <p>23 know that I want to add to that, but -- no.</p> <p>24 Q. One of the things in your basis that you</p> <p>25 touched upon was that this track was initiated for</p>	<p style="text-align: right;">Page 129</p> <p>1 didn't want to be arrested. This particular kid had</p> <p>2 priors and knew that the judge was going to take</p> <p>3 those priors into consideration. But I -- based on</p> <p>4 what I read, I didn't see Chelsie Gemperline as</p> <p>5 posing a significant threat of assaulting the</p> <p>6 officers as they searched for her. So when you say</p> <p>7 dangerous fugitive, that's what's coming to my mind.</p> <p>8 Q. Okay. And would this have been more a</p> <p>9 track for her safety due to her intoxication and</p> <p>10 possibly being handcuffed in that instance, then?</p> <p>11 A. I don't know that I would say it was more</p> <p>12 or less, but it certainly was a significant reason</p> <p>13 for using the dog to go out and find her.</p> <p>14 Q. And with your statement, you say the use</p> <p>15 of a police service dog to track and attempt to</p> <p>16 locate, meaning you're opining that their decision</p> <p>17 to actually deploy the dog in this instance is, in</p> <p>18 your opinion, is that that was okay for them to do,</p> <p>19 correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. It's not saying anything about the</p> <p>22 dog's performance in the field, meaning just the</p> <p>23 decision to deploy the dog was what you've opined as</p> <p>24 acceptable?</p> <p>25 A. I think I understand your question, and</p>

<p style="text-align: right;">Page 130</p> <p>1 the answer is yes.</p> <p>2 Q. Okay. Do you believe that both the</p> <p>3 Gemperline case and the Campbell case, that both of</p> <p>4 those were successful uses of a police K9?</p> <p>5 A. What do you mean by successful?</p> <p>6 Q. That they fulfilled the goals and</p> <p>7 objectives at the point of deployment?</p> <p>8 A. Well, in both cases the individuals that</p> <p>9 they sought were found.</p> <p>10 Q. And are those the results that you would</p> <p>11 expect when deploying a K9, based upon your</p> <p>12 knowledge, training and experience?</p> <p>13 A. Depends on the circumstance to say that --</p> <p>14 Q. I'm talking in these particular cases.</p> <p>15 A. Sure.</p> <p>16 Q. Were these the -- as a supervisor, or</p> <p>17 someone in a supervisory role, knowing that you</p> <p>18 aren't necessarily an expert in handling and</p> <p>19 controlling of K9s, but as a supervisor, knowing</p> <p>20 that the decision to deploy Spike in this instance</p> <p>21 to locate Chelsie Gemperline as you opine was a --</p> <p>22 you believed a good decision. Was the result</p> <p>23 obtained what you would have expected in this case?</p> <p>24 MR. WEISENFELDER: Objection as to the</p> <p>25 form. Go ahead.</p>	<p style="text-align: right;">Page 132</p> <p>1 world. I'm not sure that I know what John Q.</p> <p>2 Citizen or Jane Q. Citizen would know about what a</p> <p>3 dog is going to do. I also grew up around -- I</p> <p>4 mean, I do not remember a time there was not a --</p> <p>5 when I was a kid, I do not remember a time that</p> <p>6 there was not a dog, usually a German Shepherd</p> <p>7 bigger than me, around.</p> <p>8 Q. That would not be typical for most people,</p> <p>9 correct?</p> <p>10 A. Probably not. I mean, yeah, most</p> <p>11 people -- I don't remember a time there wasn't a</p> <p>12 horse that didn't tower over me, too. I don't --</p> <p>13 yeah, probably that's -- my experience is probably</p> <p>14 not typical.</p> <p>15 Q. And most people, whether or not they have</p> <p>16 experience with a house pet dog, most people do not</p> <p>17 have any experience at all with police K9s,</p> <p>18 correct?</p> <p>19 A. Fair enough.</p> <p>20 Q. And if they don't have any experience with</p> <p>21 police K9s, how would they otherwise know what a</p> <p>22 police K9 is supposed to do, what they're supposed</p> <p>23 to do, or otherwise when encountering a police K9?</p> <p>24 MR. WEISENFELDER: Objection.</p> <p>25 A. Didn't every kid in the '80s and '90s</p>
<p style="text-align: right;">Page 131</p> <p>1 A. I would have expected the dog team to</p> <p>2 locate -- I mean, optimally it's not what I would</p> <p>3 have hoped for, but it's certainly within the realm</p> <p>4 of what I would have expected to happen.</p> <p>5 Q. Is this to say that you expected</p> <p>6 Ms. Gemperline to be located but not bitten?</p> <p>7 A. Well, I would have -- that certainly would</p> <p>8 be one hope. Another hope would be that</p> <p>9 Ms. Gemperline would have made herself known.</p> <p>10 Q. Would you agree with the proposition that</p> <p>11 most people in the general public have no idea what</p> <p>12 K9s are supposed to do, or what they do do when</p> <p>13 they're deployed in a -- in the field?</p> <p>14 A. I don't know. I don't know, that's not --</p> <p>15 I'm not sure.</p> <p>16 Q. Okay. Meaning should average John Q.</p> <p>17 Public know what a K9 service dog is supposed to do,</p> <p>18 or what they're supposed to do in response to an</p> <p>19 interaction with a K9 service dog?</p> <p>20 MR. WEISENFELDER: Objection. Go ahead.</p> <p>21 A. I think that's the same question that I</p> <p>22 didn't know the answer to. I don't know what the --</p> <p>23 I know I was raised around dogs, my family has a</p> <p>24 heritage of law enforcement going back a long ways.</p> <p>25 A couple kids that are cops. I've lived in cop</p>	<p style="text-align: right;">Page 133</p> <p>1 watch Rin Tin Tin?</p> <p>2 Q. So they were supposed to have watched TV</p> <p>3 and gained knowledge from the television, in your</p> <p>4 opinion, about it?</p> <p>5 A. I don't know that I'm opining on that.</p> <p>6 I'm just telling you that I don't know what other</p> <p>7 people might think.</p> <p>8 Q. So when you make the statement that</p> <p>9 Chelsie Gemperline should have done something,</p> <p>10 there's no basis for that opinion that she was --</p> <p>11 had the knowledge or capacity to know how to act or</p> <p>12 react to a police K9, correct?</p> <p>13 MR. WEISENFELDER: Objection.</p> <p>14 A. I think that's correct, but I also want</p> <p>15 you to understand that my answer was predicated only</p> <p>16 on the presence of a dog. I would have hoped that</p> <p>17 she would have made herself known when she realized</p> <p>18 that officers were not going to just, you know,</p> <p>19 leave her out there. That they were actively</p> <p>20 looking for her. That she would have been like her</p> <p>21 friend who sponsored the party, and despite being I</p> <p>22 think underage and drinking herself, cooperated with</p> <p>23 the police. It didn't turn out that way.</p> <p>24 Q. Based upon your knowledge, training and</p> <p>25 experience as a police officer, when a suspect is</p>

<p style="text-align: right;">Page 134</p> <p>1 encountered, isn't the suspect supposed to do 2 nothing unless ordered by the police officer to do 3 something? Meaning a suspect ideally makes no 4 furtive gestures or sudden movements, they just 5 stand there, sit there or otherwise wait for 6 direction from an officer, correct, when being 7 encountered? 8 A. I don't know that I've ever seen a 9 situation unfold like that. I mean, the typical 10 situation unfolds in the gross sense in the pattern 11 of an officer recognizing that there's a suspect, 12 and the officer immediately giving some commands, 13 and the suspect either responding or not responding 14 to those commands. 15 Q. Meaning, as an officer that's approaching 16 or walking up to somebody, that person can either 17 stand there or sit there and continue to be 18 approached, or the alternative reaction is for that 19 suspect to flee, correct? 20 A. That's one alternative. 21 Q. Okay. What are the other alternatives? 22 A. The suspect might, I think you said was 23 sitting, the suspect might leap up and launch an 24 attack against the officer, an assault against the 25 officer.</p>	<p style="text-align: right;">Page 136</p> <p>1 person to, if they chose to not flee again, so we've 2 ruled that one out by taking this particular track. 3 The most common response would be for that person to 4 verbalize and, you know, they've fled. They're 5 probably aroused emotionally. It's pretty typical 6 to see that emotional arousal manifest itself in 7 being -- in vocalizing, verbalizing their 8 displeasure at being caught or going to jail, or 9 whatever the consequence is that they believe is 10 going to happen. The consequence that motivated 11 them to flee from the police in the first place. 12 Q. In this instance, there were other means 13 in which to locate or find Ms. Gemperline, correct? 14 A. Were there? 15 Q. Other than using a K9 unit? 16 A. Well, such as? 17 Q. Meaning they could have done a foot search 18 for her. 19 A. Given the number of officers and the other 20 people who were in custody available, I don't know 21 that a foot search would have been particularly 22 effective in this area. Also factoring in the 23 terrain, time of night. 24 Q. They had identified who this person was, 25 correct? They knew her identity at the time when</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. Okay. So we have basically three 2 different scenarios when a suspect's approached. 3 They'll either stand there, sit there and wait to be 4 approached or told what to do by the officer, 5 correct? They will possibly flee, or the other 6 alternative is that they get combative and attack 7 the officer. 8 A. Can we agree that there may be a lot of 9 subsets within those three categories? 10 Q. We can agree that there would be, but 11 those are probably the three most often encountered 12 scenarios? 13 A. Sure. If you want to say that those are 14 the most common scenarios, and a general description 15 of them, I think that's true. 16 Q. And with those being the common scenarios, 17 ideally, the officer most encounters is the suspect 18 that just stays there, sits there and is approached 19 until told to do otherwise by the officer? 20 A. In the context of someone who's fled from 21 the police, that would not be the most common 22 response, no. 23 Q. Okay. What would be the most common 24 response then? 25 A. The most common response would be for the</p>	<p style="text-align: right;">Page 137</p> <p>1 she fled out of the cruiser? 2 A. I think there was some indication of who 3 she was. 4 Q. Okay. They could have gone looking for 5 her at her residence, her acquaintances, correct? 6 A. That certainly would have been a 7 possibility. 8 Q. What is the next opinion that you offer 9 after Page 8 then? 10 A. Well, on Page 10, I don't know that you've 11 discussed my opinion that I believe that the 12 officers had a duty to try and find Ms. Gemperline 13 and prevent further injury, or prevent injury to 14 her. I don't know if you meant to include that in 15 your earlier discussion. 16 Q. Yes. You tell me which are the opinions 17 that you're offering because it's -- as I read it, 18 you know, the 9(a) was an opinion. 19 A. Right. 20 Q. And if you're telling me your next opinion 21 is on Page 10, tell me what that opinion is that 22 you're offering. 23 A. Well, I believe my answer included, but 24 I'm not sure that you specifically asked before that 25 the officers had a duty, and I think here I used the</p>

<p style="text-align: right;">Page 138</p> <p>1 term obligation. Yes. An obligation to use all 2 reasonable means to find Ms. Gemperline and prevent 3 her from injuring herself because of her impairment. 4 Q. Okay. Meaning that that duty arose out of 5 an interest in Ms. Gemperline's safety, correct? 6 A. They'd taken her -- they had taken her 7 into custody. They had assumed custody and assumed 8 responsibility of her. 9 Q. And based upon that they had an obligation 10 then to ensure her safety after taking her into 11 custody? 12 A. I believe so. 13 Q. What is the next opinion that you offer? 14 A. You'll go to Page 5, at the end of Page 15 5 -- or excuse me, paragraph 5, Page 11. 16 Q. Okay. 17 A. At the end of Page 11, paragraph 5, 18 there's some bold -- is it bolded in yours? 19 Q. Yes. 20 A. Yeah. You're right there. 21 Q. It says -- 22 A. That the use of force -- use of force 23 policy is consistent with generally accepted police 24 service dog practices. 25 Q. Okay. And can you explain that opinion to</p>	<p style="text-align: right;">Page 140</p> <p>1 of the legal officers section of the International 2 Association of Chiefs of Police, which I'm a member. 3 I don't remember whether it was in Denver or in 4 San Diego, but several years ago I remember being in 5 a meeting where there were a number of issues 6 raised, and -- about some policies, and one of the 7 issues that I recall being raised with that policy 8 was an issue that I think that's actually come up in 9 this case. And that is, that the policy as written 10 seems to be very focused on one general area of 11 police service dog use, and that is deployment of a 12 dog to search a building for a fleeing suspect or a 13 fugitive suspect. And so I know that -- it's not 14 anything I had responsibility for, but I know there 15 was some discussion of expanding the scope of that 16 policy, and providing some additional language to 17 deal with other circumstances. Whether that 18 happened or not, I do not know. 19 Q. Okay. We discussed previously a little 20 bit, and you touched upon the fact that you wouldn't 21 classify Ms. Gemperline as a, I think the term we 22 used was dangerous fugitive, is that -- 23 A. That was your term, yes. 24 Q. Okay. 25 A. And I agreed --</p>
<p style="text-align: right;">Page 139</p> <p>1 me? It looks like it means that the police 2 department policy, which we had marked previously as 3 S2, that you believed that that was consistent with 4 generally accepted police service dog practices? 5 A. And policies, yes. 6 Q. And policies. Meaning, that that policy 7 is consistent with other police agencies' policies? 8 A. It was at the time. Again, my 9 understanding is that the International Association 10 of Chiefs of Police has changed that policy, but at 11 the time that these facts arose, I believe that was 12 the IACP, and I think they called it model K9 policy 13 that was in effect at the time. 14 Q. Okay. And you're aware that there was 15 some dispute as to whether or not that policy was in 16 effect or not in effect at that time? 17 A. Right. 18 Q. But if it was in effect, you think it was 19 a consistent policy with what was in place during 20 that time period? 21 A. Generally, yes. 22 Q. What was changed in that policy to your 23 knowledge? 24 A. I don't recall what was changed. I know 25 that there was some -- I recall being in a meeting</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. Would you -- 2 A. I don't think -- as I understand dangerous 3 fugitive, I would not have classified her that 4 evening as a dangerous fugitive. 5 Q. You would agree then that she was not a 6 real threat to the safety of the officers -- 7 MR. WEISENFELDER: Objection. 8 Q. -- meaning she was a drunk 18-year-old 9 female that probably weighed about 110 pounds 10 soaking wet, a petite small girl. 11 MR. WEISENFELDER: Objection. Go ahead. 12 A. Okay. I agree that she was petite. I 13 agree that she was impaired. I agreed that -- and I 14 don't think you said this, but I didn't see any 15 reports of any behavior to suggest that she was a 16 physical threat. But as the father of a very, very 17 tough cop who is a blond female about that size, 18 I'll tell you, she can be a serious threat, and is a 19 dang good street cop and good street fighter. So 20 that -- the fact that she's small and she's young, 21 that alone does not make her a threat. But I didn't 22 see any -- in the record, I didn't see any behavior 23 from her that's particularly threatening. She was 24 mouthy, but gosh, I've dealt with mouthy -- 25 Q. Every other drunk person you've pulled</p>

<p style="text-align: right;">Page 142</p> <p>1 over in your career, probably, right?</p> <p>2 A. Yeah. I mean, you just -- you just kind</p> <p>3 of let that go.</p> <p>4 Q. And you'd agree that this particular girl,</p> <p>5 I'm sure, did not have the training that that little</p> <p>6 darling of a daughter of yours had that has enabled</p> <p>7 her to --</p> <p>8 A. Probably not.</p> <p>9 Q. -- kick somebody.</p> <p>10 A. Probably not.</p> <p>11 Q. And --</p> <p>12 A. My daughter grew up taking bites from</p> <p>13 police service dogs.</p> <p>14 Q. And you would agree with me then that her</p> <p>15 ability to -- Ms. Gemperline to, I think you stated</p> <p>16 in your report, and I'm just going to quote, summon</p> <p>17 confederates to assist her in assaulting the</p> <p>18 officers, that that would be an unlikely scenario in</p> <p>19 this instance?</p> <p>20 A. I think it's --</p> <p>21 MR. WEISENFELDER: Objection. Go ahead.</p> <p>22 A. I think it's certainly a possibility. How</p> <p>23 likely it was, I don't know. I mean, it becomes</p> <p>24 more likely when you consider that I don't think any</p> <p>25 of the officers knew how many people had run away</p>	<p style="text-align: right;">Page 144</p> <p>1 the luxury of foreknowledge, they just don't.</p> <p>2 Q. I understand that. But we can agree</p> <p>3 though that her summoning confederates to assist in</p> <p>4 launching an attack on the Springboro police</p> <p>5 officers that were on the scene was a remote</p> <p>6 possibility, correct?</p> <p>7 MR. WEISENFELDER: Objection.</p> <p>8 A. I wouldn't agree that it was remote. I'll</p> <p>9 agree that it wasn't very likely. And I'll agree</p> <p>10 that the officers didn't know that one way or the</p> <p>11 other.</p> <p>12 Q. What is the next opinion that you're</p> <p>13 offering in this matter?</p> <p>14 A. Paragraph 6, the bold language at the end,</p> <p>15 using the police service dog to track Ms. Gemperline</p> <p>16 was generally consistent with police practices.</p> <p>17 Q. What is your basis for that opinion?</p> <p>18 A. She had -- Ms. Gemperline had, in fact,</p> <p>19 been in custody. She had escaped from custody,</p> <p>20 albeit she didn't escape from a jail, I understand</p> <p>21 that, but she had escaped from custody and presented</p> <p>22 a danger to herself, and potentially to others. She</p> <p>23 had committed what I understand and been informed to</p> <p>24 be a felony crime in the State of Ohio. And she was</p> <p>25 actively trying to avoid efforts to take her into a</p>
<p style="text-align: right;">Page 143</p> <p>1 from that party, or what they -- their mental state</p> <p>2 was, or what their gender and size was. I think</p> <p>3 it's fair to -- for the cops seem to assume that if</p> <p>4 there are a bunch of young women there at the party</p> <p>5 that there were a bunch of young men there, as well,</p> <p>6 that fled. So, I don't know how -- I don't know</p> <p>7 that I can tell you how likely -- I can't quantify</p> <p>8 how likely it was that she could summon</p> <p>9 confederates, but I do think that that was a real</p> <p>10 possibility.</p> <p>11 Q. Anything's possible, correct?</p> <p>12 A. Anything is possible.</p> <p>13 Q. Any suspect could flee and later show back</p> <p>14 up with a Tommy gun, right?</p> <p>15 A. Sure.</p> <p>16 Q. It's possible. But in all probability</p> <p>17 it's highly unlikely that any suspect could get</p> <p>18 their hands on a Tommy gun, correct, in the context</p> <p>19 of fleeing from a police officer?</p> <p>20 A. I don't know your culture and your</p> <p>21 environment here. In my neck of the woods, probably</p> <p>22 not a Tommy gun, but I'd be surprised if there were</p> <p>23 many people in Utah that couldn't fairly quickly put</p> <p>24 their hands on a gun, or Colorado or Idaho. I don't</p> <p>25 know. But I think that it's -- officers don't get</p>	<p style="text-align: right;">Page 145</p> <p>1 place of confinement and further her detention.</p> <p>2 Q. And if I'm understanding your explanation</p> <p>3 correctly, that was the decision to track</p> <p>4 Gemperline, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Not the performance of the dog,</p> <p>7 itself, correct?</p> <p>8 A. Correct.</p> <p>9 Q. What is the next opinion that you -- let</p> <p>10 me go back. Is there any other basis for that</p> <p>11 opinion that you're offering, other than what you've</p> <p>12 just described?</p> <p>13 A. Other than what I've stated, no.</p> <p>14 Q. Okay. Let's go to the next opinion then.</p> <p>15 A. Paragraph 8 on Page 13 that Spike was kept</p> <p>16 on a lead. Here, we talk about a 15-foot lead,</p> <p>17 which is my understanding, believed it was used to</p> <p>18 track Gemperline.</p> <p>19 Q. And is your basis of this then the</p> <p>20 Department General Order 1.3.4 that you cite there?</p> <p>21 A. That, and what I understand police</p> <p>22 practices with respect to K9s to be, generally.</p> <p>23 There are a lot of different options for tracking.</p> <p>24 I mean, you can actually have like a 50-foot lead in</p> <p>25 some circumstances. A 15-foot, a 12 to 15-foot lead</p>

<p style="text-align: right;">Page 146</p> <p>1 is not unusual, and actually in this case, although</p> <p>2 the lead was 15 feet, that wasn't the actual lead</p> <p>3 distance because, at least according to testimony,</p> <p>4 Officer Clark had picked up some of the slack,</p> <p>5 choked down on -- moved down on the lead, so to</p> <p>6 speak.</p> <p>7 Q. Okay. Any other basis?</p> <p>8 A. No.</p> <p>9 Q. Would you agree with the statement that if</p> <p>10 a handler has control of his dog on a short lead</p> <p>11 that there should be little possibility of an</p> <p>12 unintended bite?</p> <p>13 A. Did you say little or low --</p> <p>14 Q. If a handler has control of his dog on a</p> <p>15 short lead, there should be little possibility of an</p> <p>16 unintended bite?</p> <p>17 A. I think that's generally true.</p> <p>18 Q. So, if I'm understanding this opinion</p> <p>19 correctly that it was -- to the extent that there</p> <p>20 was a policy in place, that it complied with the</p> <p>21 policy that he was conducting the track with the dog</p> <p>22 on the lead?</p> <p>23 A. Correct.</p> <p>24 Q. And what you're telling me additionally is</p> <p>25 that based upon my question, this lead should have</p>	<p style="text-align: right;">Page 148</p> <p>1 looked at the pictures of the playhouse, I certainly</p> <p>2 agree that it didn't seem to be a likely hiding</p> <p>3 place. I don't think that he believed that</p> <p>4 Ms. Gemperline was hiding in the playhouse.</p> <p>5 Moreover, based on the behavior of Spike,</p> <p>6 the behavior that Officer Clark observed immediately</p> <p>7 prior to the incident in which Ms. Gemperline was</p> <p>8 bitten, the dog, Spike, had pulled Officer Clark in</p> <p>9 the direction of a deck that suggested to Officer</p> <p>10 Clark -- he actually believed that Spike was trying</p> <p>11 to communicate to him that there was a person hiding</p> <p>12 somewhere on the deck. And as I recall, I think</p> <p>13 Officer Clark actually went toward -- I think he</p> <p>14 actually went -- yeah, he did, went and searched the</p> <p>15 area of the deck, lit it up, illuminated it. He</p> <p>16 didn't see anyone, and at that point I believe,</p> <p>17 again, based on the testimony that Officer Clark,</p> <p>18 thought the track was over. He thought that they</p> <p>19 had not been successful and was going to return to</p> <p>20 his car. And so it was a surprise to him when Spike</p> <p>21 made a sudden movement and jumped through the</p> <p>22 playhouse.</p> <p>23 Q. Any other basis for that opinion?</p> <p>24 A. I don't recall specifically what I wrote</p> <p>25 about this in my report, but I would not expect that</p>
<p style="text-align: right;">Page 147</p> <p>1 allowed the handler to exert more control over this</p> <p>2 K9, correct --</p> <p>3 MR. WEISENFELDER: Objection.</p> <p>4 Q. -- in this incidence?</p> <p>5 MR. WEISENFELDER: Objection. Go ahead.</p> <p>6 A. As a general proposition, the shorter the</p> <p>7 lead the more control, as a general proposition.</p> <p>8 Q. And in this instance, does it defer from</p> <p>9 the general proposition?</p> <p>10 A. I don't believe so.</p> <p>11 Q. What's the next opinion that you offer in</p> <p>12 your report, or that you're offering in this case?</p> <p>13 A. The next broad opinion is right below</p> <p>14 that, subparagraph, I think it says B. Anyway it's</p> <p>15 on Page 13, and the caption is B, that the bite on</p> <p>16 Ms. Gemperline was an unintended bite, and</p> <p>17 unanticipated, and that the officer limited the bite</p> <p>18 exposure.</p> <p>19 Q. What's your basis for that opinion?</p> <p>20 A. I don't -- the testimony of Officer Clark,</p> <p>21 as well as the circumstances of the track, lead me</p> <p>22 to believe that Officer Clark did not anticipate</p> <p>23 that Ms. Gemperline was in the playhouse in the</p> <p>24 backyard of the residence where she was at. That he</p> <p>25 actually had walked by the playhouse, and as I</p>	<p style="text-align: right;">Page 149</p> <p>1 Officer Clark and Spike had ever trained in an</p> <p>2 environment with a child's playhouse, so this is</p> <p>3 something that would be new to Spike and new to</p> <p>4 Officer Clark, and I don't think that he anticipated</p> <p>5 that Spike would jump up and go through the -- I</p> <p>6 mean, you've seen the pictures, it's a pretty</p> <p>7 small -- pretty small opening. It's a window of the</p> <p>8 window opening of the playhouse.</p> <p>9 Q. Any other basis for your opinion?</p> <p>10 A. No. I believe that's it.</p> <p>11 Q. Okay. And in conducting dog training, all</p> <p>12 of the scenarios in the training gamut aren't</p> <p>13 necessarily what's encountered out in the field,</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Meaning you will train a dog to enter a</p> <p>17 door, enter other structures, home -- whether it be</p> <p>18 a home, a business, a chicken house or otherwise,</p> <p>19 these dogs are trained to go in wherever they're</p> <p>20 commanded and trained to go into, correct?</p> <p>21 A. Yes. That's correct.</p> <p>22 Q. They don't have to receive training in a</p> <p>23 specific structure to perform properly, correct?</p> <p>24 A. In a general sense. I mean, there may be</p> <p>25 types of structures that are so unique or access to</p>

<p style="text-align: right;">Page 150</p> <p>1 structures that are unique and different that 2 present a real obstacle in the field to a dog that 3 the dog hasn't been trained. 4 Q. Meaning just because a dog encounters a 5 suspect in a plastic child's playhouse, doesn't mean 6 that it should perform any differently than when it 7 encounters a suspect in a wooden shed in somebody's 8 backyard, correct? 9 MR. WEISENFELDER: Objection. 10 A. Once the dog is in the shed and the 11 playhouse, that may be correct. It depends on the 12 size of the shed and what's inside the shed, and the 13 ability of the dog to maneuver in the shed and so 14 forth. 15 Q. And is it your understanding, and do you 16 agree with me, that this particular backyard where 17 Ms. Gemperline was found was a fenced-in backyard? 18 A. After the fact I've seen pictures that 19 show at least part of it was fenced with a fairly 20 open wire fence. 21 Q. Would you agree with me that Officer Clark 22 should have issued verbal warnings to Ms. Gemperline 23 if he had known or thought that she was hiding in 24 this plastic playhouse prior to allowing Spike to 25 engage her, or deploying Spike?</p>	<p style="text-align: right;">Page 152</p> <p>1 A. Typically, when a dog is given a verbal 2 command, out or to release, that the dog actually 3 releases from the bite and then often goes into a 4 sitting-and-barking or even can be commanded to go 5 into down position. If the dog is in an 6 environment, and that's how the dog is trained, and 7 that's pretty common. The dog's in an environment 8 where that's impossible, and in fact the dog can't 9 get any real purchase on the ground for balance and 10 you give a dog a command to out, to release, that 11 may be confusing to the dog. And the dog's not able 12 then to release in the fashion which it's been 13 trained to do. 14 Q. And if a -- in this particular instance, 15 if Spike had just had his head inside the playhouse 16 and not his whole body, there's no reason why he 17 could not have released and backed out as you've 18 described, correct, with a verbal command? 19 A. I don't know. 20 Q. Meaning there would be nothing physically 21 preventing the dog from doing so, based upon the 22 pictures that you've seen of the scene in the 23 backyard, correct? 24 A. I don't know. 25 Q. One of the things that I noticed that you</p>
<p style="text-align: right;">Page 151</p> <p>1 A. If he had known that she was in there, he 2 should have given her commands and an opportunity to 3 surrender. 4 Q. Do you agree that performing a choke off 5 maneuver increases the bite pressure that a dog 6 exerts against a suspect? 7 A. I believe that it certainly can. There's 8 some variables there, but I believe that it can. 9 Q. Do you agree with me that a verbal command 10 to a K9 is the quickest way to have a dog disengage 11 a bite? 12 A. Under ideal circumstances, yes. 13 Q. Meaning you give it a command verbally and 14 it releases immediately, correct? That's what it's 15 supposed to do? 16 A. Under, again, with the qualification under 17 ideal circumstances, yes. 18 Q. It's much quicker than performing a choke 19 off maneuver, correct? 20 A. It can be. 21 Q. It should be? 22 A. It should be if the conditions allow it to 23 be so. 24 Q. What conditions wouldn't allow it to be 25 so?</p>	<p style="text-align: right;">Page 153</p> <p>1 did not address in your report were the comments of 2 Officer Clark that he made prior to deploying Spike 3 to find Ms. Gemperline. Are you familiar with those 4 comments? 5 A. I think I know what you're talking about, 6 but I would prefer that you tell me what you -- 7 which comments specifically you're talking about. 8 Q. I'm talking about specifically where 9 Officer Clark can be heard prior to deploying Spike 10 to track Ms. Gemperline something to the effect of 11 this bitch, I've had it, she's going to get a nice 12 rude awakening here in a minute or two. It's not 13 going to feel very good. 14 A. I've heard that on the recording. 15 Q. And -- 16 A. I think I've read it. Well, I know I've 17 read it somewhere. 18 Q. And you would agree with me that that 19 would indicate, or tend to indicate that Officer 20 Clark intentionally allowed his dog to engage with 21 Ms. Gemperline? 22 MR. WEISENFELDER: Objection. Go ahead. 23 A. I don't know what was in his mind, and why 24 he said what he said. 25 Q. I didn't ask you what was in his mind. I</p>

1 asked you if you would agree that that would tend to
2 indicate that Spike -- or that Officer Clark
3 intended for Spike to bite and engage
4 Ms. Gemperline?

5 MR. WEISENFELDER: Objection. I think he
6 answered you that he didn't know what was in
7 Clark's mind.

8 Q. If it's a factor from his evaluation of
9 the circumstances that that would indicate that yes,
10 it was intentional?

11 MR. WEISENFELDER: Objection. Go ahead.

12 Q. I'm not asking you what's in Clark's mind.
13 You, as an evaluator.

14 A. Well, but you really are because as an
15 evaluator I have to figure out what is he -- what is
16 he thinking. And, in fact, I recently disciplined a
17 employee, a veteran with more years of service than
18 me in my -- I said to him, what were you thinking
19 when you made this comment. Because that's
20 important, what was he thinking.

21 Q. And you just said, what was he thinking,
22 have you ever spoken with Nick Clark?

23 A. I have not.

24 Q. Okay. So what was he thinking when he
25 made that comment, since that is what you're

1 know what he was thinking, so I have to -- I can't
2 tell you. I just can't tell you.

3 Q. Is that to say that that comment would not
4 be reflective of a professional K9 handler?

5 MR. WEISENFELDER: Objection.

6 A. I generally find no reason for a police
7 officer, or other people for that matter, to engage
8 in profane language. And I don't know what was
9 added here. I suppose if Officer Clark thought that
10 his statement would be heard and cause fear and
11 prompt to surrender, that might be one thing, but I
12 don't know. I'm not sure that I can really
13 speculate on what he was thinking. I don't know and
14 I can't guess.

15 Q. And you've listened to this tape,
16 Ms. Gemperline had fled. She was nowhere in the
17 immediate vicinity where she would have heard this
18 statement by Officer Clark, correct?

19 MR. WEISENFELDER: Objection.

20 A. I think in hindsight, I know that she was
21 far enough away that she probably didn't hear. I
22 don't know what he knew or thought at the time.

23 Q. This wasn't, in your opinion, issued as a
24 verbal warning to Ms. Gemperline about the possible
25 use of a K9 being deployed against her, are you?

1 considering?

2 A. I don't know --

3 MR. WEISENFELDER: Objection.

4 THE WITNESS: I'm sorry.

5 MR. WEISENFELDER: Go ahead.

6 A. I don't know what he was thinking.

7 Q. But you would not agree with me that it
8 would tend to indicate that the bite was
9 intentional?

10 A. I would agree that certainly it raises a
11 question as to why he would say something like that.

12 Q. Does it cause you to question the results
13 that occurred as a result of the deployment of the
14 K9 unit in this particular circumstance?

15 A. I think that my reaction when I heard the
16 record, or read it, and I don't remember whether I
17 heard it first or read it first, but I think my
18 reaction was much the same, what were you thinking.
19 It's not the type of comment that, you know, one
20 would hope to hear come from one of -- I'm a chief.
21 I would not expect one of my staff of men or women
22 who work for me to say something like that. But in
23 my career I said stupid things. I probably said
24 some stupid things here today that when I'm reading
25 the transcript I'll regret. That happens. I don't

1 A. If it was, it's not the form of a warning
2 which I prescribe in the training that I present.

3 Q. So it's an improper warning at the very
4 best, is that fair to say?

5 A. It's not appropriate language, sir.

6 Q. And, in fact, it was a threat of harm,
7 wasn't it?

8 A. Well, I suppose that's subjective. But
9 again, it's not the language I would want to use.

10 Q. I understand it's not the language you'd
11 want to use, but it's the language that was used,
12 and you're the one evaluating the case, correct?

13 A. Yes.

14 Q. So because that is the language that was
15 used, and you're the one evaluating the case,
16 wouldn't that not indicate to you a threat of
17 physical harm?

18 A. That's -- as you sit here and pose that
19 hypothetical to me, it's certainly, I think, one way
20 that one could interpret that statement. I didn't,
21 and I don't.

22 Q. Okay. So you don't believe that that was
23 a threat of harm directed towards Ms. Gemperline,
24 that statement of, she's going to get a nice rude
25 awakening here in a minute or two. It's not going

<p style="text-align: right;">Page 158</p> <p>1 to feel very good.</p> <p>2 A. I don't see that as an explicit threat.</p> <p>3 What he had in his mind when he said it I just do</p> <p>4 not know.</p> <p>5 Q. You would agree with me that according to</p> <p>6 the account of the encounter by Officer Clark, at</p> <p>7 least his version of the events that occurred that</p> <p>8 he's testified to in his deposition and that he</p> <p>9 wrote in his report, that Ms. Gemperline at no time</p> <p>10 made any furtive movement or flight or anything that</p> <p>11 would have triggered a bark-and-hold dog to bite</p> <p>12 her, correct?</p> <p>13 A. I didn't see any indication of that in his</p> <p>14 report or his testimony.</p> <p>15 Q. Okay. Meaning that if Spike had been a</p> <p>16 properly trained bark-and-hold dog, in all</p> <p>17 likelihood, Ms. Gemperline would not have been</p> <p>18 bitten given her reaction to the presence of the K9</p> <p>19 unit?</p> <p>20 MR. WEISENFELDER: Objection. Go ahead.</p> <p>21 A. I don't know that to be the case.</p> <p>22 Q. Well, when you spoke about what a properly</p> <p>23 performing bark-and-hold K9 unit, how they're</p> <p>24 supposed to perform, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 160</p> <p>1 A. I don't think so.</p> <p>2 Q. You think that a bark-and-hold K9 would</p> <p>3 have engaged Ms. Gemperline in this circumstance</p> <p>4 then?</p> <p>5 A. I think that's very possible.</p> <p>6 Q. Despite the fact that she made no movement</p> <p>7 or other furtive gesture?</p> <p>8 MR. WEISENFELDER: Objection.</p> <p>9 Q. Correct?</p> <p>10 A. I don't know that she didn't make a</p> <p>11 movement.</p> <p>12 Q. You're presuming that she possibly made</p> <p>13 some type of movement that would have triggered the</p> <p>14 dog to attack, correct?</p> <p>15 A. I think that's a possibility.</p> <p>16 Q. But it's not a probability, is it?</p> <p>17 A. Well, whether it's a probability or not</p> <p>18 calls for me to speculate on what she did. And I</p> <p>19 don't know but I think it's fairly -- I think it's</p> <p>20 fairly likely that she did engage in some movement</p> <p>21 that triggered the dog's behavior. I don't know</p> <p>22 that.</p> <p>23 Q. And you're saying about this speculation,</p> <p>24 well, you're speculating as to what Officer Clark</p> <p>25 said when you say that you didn't think he intended</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. And you told me earlier that that dog is</p> <p>2 supposed to bark at or circle-and-bark a suspect</p> <p>3 unless some type of furtive movement is made,</p> <p>4 correct?</p> <p>5 A. Under ideal circumstances, that's true.</p> <p>6 Q. And Ms. Gemperline didn't make in this</p> <p>7 instance any furtive movement, correct?</p> <p>8 MR. WEISENFELDER: Objection. Go ahead.</p> <p>9 A. I believe that it's true that Officer</p> <p>10 Clark has not testified that she did, or written in</p> <p>11 his report that she did.</p> <p>12 Q. And nobody else has testified that she</p> <p>13 made any furtive movement, correct? Or provided any</p> <p>14 evidence to the contrary to that?</p> <p>15 A. No. Not that I recall.</p> <p>16 Q. And based upon that, if there was a</p> <p>17 properly performing bark-and-hold K9 unit there,</p> <p>18 that she would not have been bitten and just been</p> <p>19 barked at, correct?</p> <p>20 A. I don't know that to be the case.</p> <p>21 Q. In all probability, wouldn't that have</p> <p>22 been what occurred?</p> <p>23 MR. WEISENFELDER: Objection. Go ahead.</p> <p>24 Q. Based upon your knowledge, training and</p> <p>25 experience, and your review of this case?</p>	<p style="text-align: right;">Page 161</p> <p>1 Spike to engage Ms. Gemperline, correct?</p> <p>2 A. That's my opinion.</p> <p>3 Q. Okay. And you're speculating that because</p> <p>4 you don't know what was in Officer Clark's head,</p> <p>5 correct?</p> <p>6 A. I do not know what he was thinking.</p> <p>7 Q. But based upon the facts that you do know</p> <p>8 from all of the information that you've been</p> <p>9 provided by Mr. Weisenfelder and your review of the</p> <p>10 documents and the records, not one of them, nor can</p> <p>11 you point to any one of them, indicate that Mr. --</p> <p>12 Ms. Gemperline ever made any movement whatsoever</p> <p>13 that would have triggered that dog to attack her had</p> <p>14 it been a bark-and-hold trained dog acting as it's</p> <p>15 supposed to?</p> <p>16 MR. WEISENFELDER: Objection. Asked and</p> <p>17 answered. Go ahead.</p> <p>18 A. All the documents that have been provided</p> <p>19 to me, the only -- my belief is the only person who</p> <p>20 saw inside of that playhouse was Ms. Gemperline.</p> <p>21 And she has not testified that she made any</p> <p>22 movements.</p> <p>23 Q. What is the next opinion that you're</p> <p>24 offering? Strike that. Let's go back and talk</p> <p>25 about one more thing while we're on the unintended</p>

<p style="text-align: right;">Page 162</p> <p>1 nature, as you opined. Are you familiar with Sgt. 2 Dulle in this matter? 3 A. Yes. 4 Q. Are you aware that Sgt. Dulle's report 5 indicated that after this bite incident occurred 6 that Officer Clark had a conversation with Sgt. 7 Dulle regarding the bite? 8 A. I don't remember the timing, but I know 9 that there was a conversation at some point. 10 Q. Okay. And are you aware that it was Sgt. 11 Dulle's impression, and it was conveyed to him 12 according to his report and his testimony that 13 Officer Clark knew where Ms. Gemperline was prior to 14 allowing Spike to engage her? 15 A. I don't -- can you pull his deposition 16 out, because I don't recall exactly what he said 17 with respect to that. 18 MR. BRANNON: Can we get a copy of this 19 real quick? 20 MR. WEISENFELDER: Not real quick. 21 Q. Okay. I'm going to hand you what's been 22 previously marked as Defendants' G25, and I'm going 23 to let you review that document. 24 A. Okay. 25 Q. Are you familiar with that memorandum from</p>	<p style="text-align: right;">Page 164</p> <p>1 MR. WEISENFELDER: Objection. 2 A. If that recollection is accurate, that's 3 certainly something to consider in that analysis. 4 Q. If that recollection is accurate, would 5 that change your opinion regarding whether or not 6 Officer Clark intended Spike to bite Ms. Campbell? 7 MR. WEISENFELDER: Objection. 8 Q. Or Ms. Gemperline, rather. 9 A. If I knew that to be absolutely accurate, 10 that would certainly be something that I think I 11 would give some further consideration to. But I'm 12 relying more on the reported behavior of the dog, as 13 well as the other information available to me. 14 Q. And that was the information that was 15 provided by Officer Clark, correct? 16 A. Correct. 17 Q. And no other source, other than Officer 18 Clark, correct? 19 A. Correct. 20 Q. Now, let's go to your next opinion that 21 you're offering in this case. 22 A. What page are we on? 23 Q. The last one we did was on Page 13. 24 A. So 15, subparagraph -- well, let me back 25 up just to make sure. Yeah, Page 15, subparagraph</p>
<p style="text-align: right;">Page 163</p> <p>1 Sgt. Dulle? 2 A. I have seen it before, yes. 3 Q. And would you agree with me that it 4 indicates that Officer Clark told Sgt. Dulle that he 5 was aware of Gemperline's presence before releasing 6 Spike to bite her? 7 MR. WEISENFELDER: Objection. Go ahead. 8 A. That's what Sgt. Dulle recounts as his 9 recollection in that report. 10 Q. And based upon that report, wouldn't you 11 agree with me that that is a factor weighing in 12 favor of indicating that it was Officer Clark's 13 intent to have Spike engage Ms. Campbell, or 14 Ms. Gemperline, rather? 15 MR. WEISENFELDER: Objection. Go ahead. 16 A. I think that's certainly something that 17 Officer Clark and Sgt. Dulle are going to have to 18 explain, their conversation. 19 Q. You would agree with me that Sgt. Dulle 20 has no interest in the outcome of this case either 21 way, correct? 22 A. I don't know. 23 Q. Wouldn't that indicate that it was Officer 24 Clark's intent to have Spike engage Ms. Gemperline 25 in a bite?</p>	<p style="text-align: right;">Page 165</p> <p>1 (b)(3), the decision to physically remove the dog 2 from the bite. 3 Q. Is this your bold -- 4 A. Yes. 5 Q. -- line here? 6 A. Yeah. We've talked about it, but I'm not 7 sure that I -- 8 Q. Where it says based upon the circumstances 9 presented by Gemperline's hiding place, and the 10 actions available to Officer Clark, Officer Clark 11 made a reasonable decision to perform a choke off to 12 end the bite, correct? 13 A. Correct. 14 Q. You're not a dog handling expert, are you? 15 I think we've established that already. 16 A. I don't think that I would agree with 17 that, but -- 18 Q. Are you holding yourself out as a dog 19 handling expert then? 20 A. I have been qualified as an expert dog 21 handler, not trainer. 22 Q. Okay. And where have you been qualified 23 as an expert dog handler before? 24 A. I'd have to -- I don't have my updated CV 25 here for you, but one of the cases that we talked</p>

1 about this morning, the Trammell case as well as
2 another case we didn't talk about, Swofford versus
3 Eslinger, a case we didn't talk about, United States
4 versus Ludwig, and there have been others.

5 Q. Okay. Because when I asked you earlier
6 about what you thought you were an expert in as it
7 pertained to police K9s, you did not mention an
8 expert in dog handling, correct?

9 A. I don't recall that I didn't. I may not
10 have.

11 Q. Okay.

12 A. I think at the time your questioning was
13 focusing on training, and that's what I was keying
14 in on.

15 Q. Okay. And just so that we're more clear
16 on what your testimony is, it's your testimony that
17 you are holding yourself out as an expert in the
18 area of dog handling?

19 A. Correct.

20 Q. And your experience as a dog handler was
21 limited to working as a reserve deputy for a period
22 of approximately five years, correct?

23 A. As an actual handler?

24 Q. As an actual handler.

25 A. And not in any other roles, correct.

1 Q. Okay. And we discussed all of your other
2 roles pertaining to dog work, correct?

3 A. Yes.

4 Q. We didn't leave any of those out, correct?

5 A. I don't think so.

6 Q. Okay. And most of that other work, that
7 was in developing policies and procedures, correct?

8 A. Much of it.

9 Q. Okay. So you feel that your five years
10 working as a part-time sheriff's deputy as a K9
11 handler qualifies you as an expert dog handler, or
12 an expert in the field of dog handling? That's a
13 question.

14 A. Oh, was that a question?

15 Q. That's a question.

16 A. Coupled with all of my other experience
17 related to K9, yes.

18 Q. Okay. But your other experience with K9
19 isn't actual experience with the dog, itself, it's
20 with policies and procedures in the administrative
21 aspects of managing a K9 unit, correct?

22 A. No, not entirely.

23 Q. Well, tell me what actual experience you
24 have in handling and training police K9s outside of
25 your experience with being a sheriff's -- a

1 part-time sheriff's deputy.

2 A. We talked about my experience in working
3 as an agitator and a decoy, which I did prior to
4 becoming a handler done on a number of other
5 occasions subsequent to that. My work in training
6 handlers, primarily in the field of drug detector
7 dogs.

8 Q. And where have you actually trained people
9 in training drug detector dogs?

10 A. Part of the work that I did in Phoenix.

11 Q. Okay. And how much time did you spend in
12 Phoenix doing that?

13 A. A week or so.

14 Q. Okay. So there's one week.

15 A. A number of other seminars. I've done
16 seminars in --

17 Q. And let's differentiate seminars between
18 seminars and actual time with dogs.

19 A. Okay. Seminars where I've actually spent
20 time with the dogs and the handlers --

21 Q. Yeah.

22 A. -- in the field working? You tax my
23 memory here, but Santa Clara, California.

24 Q. For whom and how long?

25 A. That was a conference facilitated by the

1 Santa Clara County Sheriff's Office, and I believe
2 the San Jose Police Department may have
3 participated, and it was a weeklong seminar.

4 Q. When you say a weeklong seminar, was that
5 in the field training working with K9s or not?

6 A. The majority of the time was spent in the
7 field working with K9s.

8 Q. Okay. What other time --

9 A. Portsmouth, New Hampshire.

10 Q. What specifically in Portsmouth, New
11 Hampshire?

12 A. The conference facilitated by the
13 Portsmouth -- I believe it was the Portsmouth Police
14 Department.

15 Q. And how long was that, and what did you
16 do?

17 A. A week. And worked training primarily
18 narcotic detector dogs.

19 Q. Okay.

20 A. Lake County, Florida, which is the -- I
21 think the town was Kissimmee. That, too, was a week
22 or maybe it was four days, I don't recall. Again,
23 same kind of work, working and training narcotic
24 detector dogs and, obviously, and their handlers.
25 Boulder, Colorado, again, a weeklong training, again

<p style="text-align: right;">Page 170</p> <p>1 focusing on narcotic detector dogs.</p> <p>2 Q. What group?</p> <p>3 A. I can't remember whether that was the</p> <p>4 sheriff's -- I think that was a joint thing with the</p> <p>5 sheriff's office and then one of the national K9</p> <p>6 groups, and I don't recall which ones.</p> <p>7 Q. Okay. Any others?</p> <p>8 A. Yes. There's one near Milwaukee. I think</p> <p>9 it's the Waukesha, W-A-U-K-E-S-H-A, County Sheriff's</p> <p>10 Office. And one of the municipal police departments</p> <p>11 there, I don't remember which one. That was a</p> <p>12 six-day conference. And I worked both with patrol</p> <p>13 dogs and detector dogs at that particular</p> <p>14 conference.</p> <p>15 Q. Any others?</p> <p>16 A. Yes.</p> <p>17 Q. How many --</p> <p>18 A. Harris County -- Harris County Sheriff's</p> <p>19 Office in Houston, Texas, six-day conference. And</p> <p>20 the time there was spent about half patrol dogs and</p> <p>21 half narcotic detector dogs, or 40 and 60 percent.</p> <p>22 The Iowa Department of Public Safety in Des Moines,</p> <p>23 Iowa, and that, I believe, was only three days, and</p> <p>24 that was exclusively working with narcotic detector</p> <p>25 dogs.</p>	<p style="text-align: right;">Page 172</p> <p>1 A. Dual time, yeah.</p> <p>2 Q. Okay. And you believe that that qualifies</p> <p>3 you to be an expert in dog handling?</p> <p>4 A. Again, coupled with my other experience,</p> <p>5 yes.</p> <p>6 Q. Is there any other basis that you could</p> <p>7 offer me as to your opinion that Officer Clark made</p> <p>8 a reasonable decision to perform a choke off to end</p> <p>9 the bite, other than the possible physical</p> <p>10 restraints or lack of space pertaining to the</p> <p>11 situation involving Ms. Gemperline?</p> <p>12 A. No.</p> <p>13 Q. Would you agree with me that it would have</p> <p>14 been prudent for Officer Clark to at least attempt a</p> <p>15 verbal call off before engaging in a choke off</p> <p>16 maneuver?</p> <p>17 A. I believe that it would have been prudent</p> <p>18 for him to give a verbal call off at the time</p> <p>19 contemporaneous. And, in fact, I think one of the</p> <p>20 witnesses said that he did with lifting the dog off</p> <p>21 of the bite physically.</p> <p>22 Q. And so you believe based upon your review</p> <p>23 of the material that Officer Clark was both</p> <p>24 performing a choke off and giving a release command</p> <p>25 to Spike at the time he was performing the choke off</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Any others?</p> <p>2 A. I think so. I'm trying to remember. I</p> <p>3 didn't come -- it's not something I was prepared to</p> <p>4 talk about.</p> <p>5 Q. Is it safe to say that you've had probably</p> <p>6 no more than 15 additional one-week courses in</p> <p>7 training dogs, actual dog work outside of what you</p> <p>8 did with the reserve and the sheriff's department?</p> <p>9 A. And outside of agitation work?</p> <p>10 Q. Yeah, and outside being the --</p> <p>11 A. You're talking dog time only? Yeah, I</p> <p>12 think 15 weeks is probably a fair --</p> <p>13 Q. Okay.</p> <p>14 A. It might be a little low, but it's</p> <p>15 probably a fair number.</p> <p>16 Q. Okay. And that had to do mainly with</p> <p>17 narcotics dogs?</p> <p>18 A. Majority of time with narcotic detector</p> <p>19 dogs.</p> <p>20 Q. Okay. I think you listed maybe three,</p> <p>21 possibly four that were not --</p> <p>22 A. Correct.</p> <p>23 Q. -- narcotics.</p> <p>24 A. Okay.</p> <p>25 Q. Or that were at least dual.</p>	<p style="text-align: right;">Page 173</p> <p>1 procedure?</p> <p>2 A. I believe that Clark said he did not give</p> <p>3 any commands, if I remember correctly, but one of</p> <p>4 the other witnesses said that he did and it just --</p> <p>5 it would be second nature for a handler to do that.</p> <p>6 I don't know, but I believe probably commands were</p> <p>7 given.</p> <p>8 Q. Any other opinions, or let's -- any other</p> <p>9 basis --</p> <p>10 A. Basis for that, no.</p> <p>11 Q. Let's move on to your next opinion.</p> <p>12 MR. WEISENFELDER: You need a break?</p> <p>13 THE WITNESS: I don't know. How long you</p> <p>14 going to go?</p> <p>15 MR. BRANNON: It seems to keep going</p> <p>16 endless here, but we can take a break.</p> <p>17 MR. WEISENFELDER: Well, you have -- it's</p> <p>18 2:30 now.</p> <p>19 MR. BRANNON: We're at least on Page 15</p> <p>20 of the report.</p> <p>21 MR. WEISENFELDER: We kind of need to get</p> <p>22 him out of here by about 4:00.</p> <p>23 (OFF THE RECORD)</p> <p>24 BY MR. BRANNON:</p> <p>25 Q. Your next opinion then.</p>

<p style="text-align: right;">Page 174</p> <p>1 A. The next category there is C. Officer 2 Clark was exercising reasonable caution and properly 3 handling Spike at the time Ms. Gemperline received 4 an unanticipated bite, and that's really a 5 cumulative summary of what we've talked about thus 6 far. 7 Q. So, do you have any other basis other than 8 what you've already stated that he was properly 9 handling the police service dog Spike at that time 10 that she was bitten? 11 A. Just to -- no, just to sum up, he thought, 12 based on Spike's behavior that Spike was pulling him 13 toward the deck. He really believed he was going 14 toward the deck. He had actually taken steps, 15 shortened down or maybe choke isn't the right word, 16 but take up the slack on the lead so the 15-foot 17 lead was actually much, much shorter. He believed 18 that based on the testimony that the search exercise 19 was over, and he was going back to his -- back to 20 his car to put Spike up at the time that Spike 21 suddenly lurched and went into the window. So I 22 think that that's -- I think I've testified to all 23 that already, and that's really the basis there. 24 Q. Okay. Any other basis than that? 25 A. Not other than what I've mentioned</p>	<p style="text-align: right;">Page 176</p> <p>1 A. That's correct. 2 Q. And what was that basis? 3 A. The officers were responding to a 4 situation where a neighbor reported that there was 5 some kind of a domestic disturbance. When Officer 6 Clark and Officer Anderkin -- Anderkin arrived at 7 Ms. Parker's home. They saw extrinsic evidence that 8 suggested to them that there had been some violent 9 action that it appeared to them that the screen door 10 in front had been kicked in and damaged. 11 They spoke with the neighbor, Ken Simpson, 12 who told them that there had been some kind of 13 incident a couple of weeks before, and that 14 Ms. Parker had related to him that the man with whom 15 she'd had the incident had made death threats 16 against them -- excuse me, against her on a prior 17 occasion. 18 They weren't able to speak with 19 Ms. Parker. She was -- I think they later figured 20 out she was intoxicated and basically passed out. 21 They knew that the man, who at that point I don't 22 think they'd identified as Samuel Campbell, had fled 23 the area upon hearing sirens. So based on that they 24 believe that what happened was that they are 25 responding to a situation where there is at least an</p>
<p style="text-align: right;">Page 175</p> <p>1 already. 2 Q. And, again, that's a handling opinion, 3 correct? 4 A. Yes. 5 Q. What's the next opinion that you are 6 offering here? 7 A. Well, we transitioned to -- the report 8 transitions to the other situation, Mr. Campbell. 9 Q. Okay. 10 A. Page 16. There's a general statement 11 there followed by some subparagraphs with other 12 opinions that the use of Spike to track and try and 13 find Mr. Campbell after the incident at Lisa 14 Parker's house. I remember Lisa Parker's house was 15 a reasonable use of a police service dog. 16 Q. Okay. So, your opinion, and I'm just 17 going to read it verbatim here, is that the use of 18 the police service dog Spike to track and attempt to 19 locate Sam Campbell after he allegedly committed a 20 violent felony crime was reasonable and comported 21 with generally accepted police service dog 22 standards. So if I'm understanding what you're 23 opining to here, it's your opining that the decision 24 to utilize Spike on a track had a basis, had a 25 reasonable basis to it?</p>	<p style="text-align: right;">Page 177</p> <p>1 attempted, if not actual burglary. That the person 2 who committed the burglary was potentially a person 3 with whom Ms. Parker had had a dispute a couple of 4 weeks before, that the person was at least 5 potentially the person who had allegedly made some 6 kind of death threat against Ms. Parker on a prior 7 occasion. And that the person had fled from police 8 upon hearing the police response. 9 Q. Any other basis for that opinion? 10 A. No. 11 Q. Can we agree that in the Campbell incident 12 that no violent felony had, in fact, been committed? 13 MR. WEISENFELDER: Objection. 14 A. I believe that the hindsight showed that 15 that was, in fact, the case, at least not that night 16 at that place. 17 Q. Yeah, and that's what I'm -- 18 A. That's what you meant, right. 19 Q. That's the only place we're talking about 20 right now. 21 A. Right. We don't -- I don't know what 22 happened between Campbell and his girlfriend on 23 prior occasions. 24 Q. Okay. And -- 25 A. Nor is it relevant.</p>

<p style="text-align: right;">Page 178</p> <p>1 Q. And that the information that was provided 2 by Ken Simpson was some type of a domestic dispute, 3 correct? 4 A. Some type of a domestic dispute, and that 5 the man he believed to have been involved had made 6 death threats against Ms. Parker. 7 Q. And that the information -- you would 8 agree with me that the information relayed by the 9 dispatcher to the officers in your review of the 10 tapes, that it also indicated some type of a 11 domestic dispute, correct? 12 A. That is correct. 13 Q. Okay. And that it was Officer Clark or 14 Officer Anderkin or both that jumped to the 15 conclusion of this breaking and entering or 16 burglary, correct? 17 A. I don't know that I'd say that they jumped 18 to the conclusion. I think they looked at the 19 circumstances before them and thought that that was 20 one explanation of what was happening. 21 Q. And they're the only ones -- in fact, 22 Officer Clark was the only one that made the 23 conclusion that -- or the assumption that a possible 24 burglary had taken place at that time, correct? 25 MR. WEISENFELDER: Objection.</p>	<p style="text-align: right;">Page 180</p> <p>1 two, based upon your knowledge, training and 2 experience in investigating police officers' actions 3 and conduct, wouldn't it be more important to ensure 4 the safety and welfare of an individual that they 5 believed was possibly compromised rather than pursue 6 a fleeing suspect with the use of K9? 7 A. Well, I don't know. That's a judgment 8 call that they made based on their observation of 9 Ms. Parker. They could see where she was at. 10 Q. What's the next opinion that you're 11 offering in this matter? 12 A. Well, I think if you go to paragraph 4 on 13 Page 18, I think we've just finished discussing 14 that, a decision to pursue Campbell. Do you see 15 that in bold, paragraph 4? 16 Q. Okay. And let me read what you wrote 17 here. The decision to pursue Campbell was a 18 reasonable choice. They knew that he had committed 19 a serious crime. That he was actively escaping and 20 that he posed a threat to Parker having allegedly 21 threatened to kill her, according to a presumably 22 reliable named citizen informant. Let me ask you 23 about that statement. How did Officers Clark and 24 Anderkin know that the fleeing suspect had committed 25 a serious crime?</p>
<p style="text-align: right;">Page 179</p> <p>1 A. I don't recall what Officer Anderkin had 2 to say, so I'm not sure that's true. 3 Q. Okay. Regardless, it came from the 4 officers, correct? 5 A. The belief that there was a potential 6 burglary that occurred came from the officers? 7 Q. Yes. 8 A. Yes. 9 Q. Would you agree that the officers in the 10 officers' investigation of the incident, that it 11 would have been prudent for Officer Clark and 12 Officer Anderkin to make contact with Lisa Parker 13 prior to deploying the K9? 14 A. I think they tried to do just that. 15 Q. Wouldn't you agree that the safety and 16 welfare of Lisa Parker would have been more 17 important than pursuing the fleeing suspect with the 18 police K9? 19 A. Well, I think that her safety and welfare 20 certainly was one of their legitimate concerns. I 21 think that's probably why they called Holly -- and 22 I've forgotten her last name, the landlord to get a 23 key once they were unsuccessful in rousing 24 Ms. Parker. 25 Q. And my question was in the priority of the</p>	<p style="text-align: right;">Page 181</p> <p>1 A. Based on the evidence before them they 2 believed that at the very least an attempted 3 burglary had been committed. 4 Q. So that's not a true statement? They 5 believed that he may have committed a serious crime, 6 but they didn't know that he had committed a serious 7 crime, correct? 8 A. That -- I'll accept that. 9 Q. Okay. So, at best, they suspected that he 10 may have committed a serious crime, they didn't know 11 that any serious crime had been committed, or even a 12 crime at all, correct? 13 A. They didn't have any absolute certainty, 14 they just evaluated the evidence before them. 15 Q. And if no crime had been committed, 16 nobody's escaping, correct? 17 MR. WEISENFELDER: Objection. 18 A. I'm not -- I think that's a debatable 19 legal proposition. 20 Q. You're an attorney. 21 A. I'm not here to testify about what the law 22 is in Ohio. That gets me into trouble with judges. 23 Q. From a context of a police officer -- in 24 the context of being a police officer you can 25 certainly understand it, a person has to commit a</p>

<p style="text-align: right;">Page 182</p> <p>1 crime before they can escape from the scene of a 2 crime, correct? 3 MR. WEISENFELDER: Objection. 4 Argumentative now. Go ahead and answer. 5 A. I think that -- I'm not sure how the law 6 works in Ohio, but if this situation had played out 7 in Utah and the -- Mr. Campbell -- if this were to 8 play out in Utah, Mr. Campbell could potentially, 9 even though a crime may ultimately have been 10 determined not to be committed, or even though a 11 prosecutor in the exercise of her discretion may not 12 have decided to file charges for an attempted 13 burglary, or even a disorderly conduct, or a breach 14 of the peace or criminal mischief being the property 15 damage, even if the prosecutor hadn't decided to 16 file charges, at least in the system with which I am 17 familiar, Mr. Campbell still could have been 18 convicted of obstructing justice. In that he knew 19 that he was the subject of a police investigation 20 and took steps to conceal himself from the police. 21 So I don't -- you know, I think you could -- your 22 question actually is pretty darn nifty for a law 23 school hypothetical. But I don't know that I can 24 answer it for you here any better than that. 25 Q. Well, escape is a much different criminal</p>	<p style="text-align: right;">Page 184</p> <p>1 under Ohio law had been committed. I don't know 2 whether obstructing justice under Ohio law had been 3 committed. And my testimony has to do with what 4 crime the officers believed to have been -- to have 5 been committed based on what they say before them at 6 the time. 7 THE WITNESS: And with that, having 8 finished my answer to the question, how about we 9 take five? 10 MR. BRANNON: I've got a few more 11 follow-up with you, then I'll give you a break. 12 THE WITNESS: Okay. 13 Q. Would you agree with me that Officer 14 Clark, being a peace officer, should have been 15 familiar with the differences between escape and an 16 obstructing justice charge? 17 MR. WEISENFELDER: Objection. Go ahead. 18 A. I presume that those are crimes about 19 which Ohio peace officers are trained. 20 Q. And he should know, or should have known 21 at the time whether or not one was a serious felony 22 or one was a misdemeanor, correct? 23 A. Again, I believe those are crimes about 24 which he should have been trained. 25 Q. You also stated in this opinion that,</p>
<p style="text-align: right;">Page 183</p> <p>1 charge than obstructing justice, correct? 2 A. Probably under Ohio statutes it is. 3 Q. And if under Ohio statutes I can represent 4 to you under a hypothetical that escape is a felony 5 charge and obstructing justice is a misdemeanor 6 charge, and that can have a bearing on whether or 7 not a police K9 should be deployed, correct? 8 A. It could. 9 Q. And if it was only a misdemeanor 10 obstructing justice offense, that would weigh 11 against deploying a police K9 to track a suspect, 12 correct? 13 A. If that's the only crime that the officers 14 believe to have been committed, that certainly would 15 be an important factor. 16 Q. Okay. And in your analysis as you've gone 17 through this, knowing that an escape has not 18 occurred but at most an obstructing justice offense 19 may have occurred, it would indicate that the police 20 K9 in this instance should not have been deployed, 21 correct? 22 MR. WEISENFELDER: Objection. That's not 23 his testimony. Go ahead and answer. 24 A. Okay. That question has a number of 25 problems. First off, I don't know whether an escape</p>	<p style="text-align: right;">Page 185</p> <p>1 referring to Mr. Campbell, that he posed a threat to 2 Parker, meaning the girlfriend, correct? 3 A. Correct. 4 Q. After the officers arrived on the scene, 5 what threat did Mr. Campbell pose to Lisa Parker, if 6 any? 7 A. They didn't know. He certainly posed a 8 threat if he was armed of engaging them and her at a 9 distance. They didn't know whether he was armed or 10 not, he was unsearched. They didn't know if -- 11 whether he would return if they weren't able to 12 locate him. They didn't know what was in his mind. 13 They knew only the information that had been 14 communicated to them. 15 Q. And they would get that information most 16 likely from talking with Lisa Parker, herself, 17 correct? 18 A. And from Ken Simpson and from the 19 extrinsic evidence that they observed. 20 Q. Okay. So really, there was -- after the 21 officers arrived, is it fair to say that there was 22 no real threat to Lisa Parker at that time? 23 MR. WEISENFELDER: Objection. Go ahead. 24 A. No. It's not fair to say that. 25 Q. Okay. You believe that there was a</p>

<p style="text-align: right;">Page 186</p> <p>1 serious and legitimate threat to Lisa Parker after 2 the officers arrived on scene? 3 A. Well, you've asked me a question at one 4 far end of the spectrum and now you're asking a 5 question at the other far end of the spectrum, and 6 neither one of them are accurate. 7 Q. Well, I'm just asking you to answer the 8 question that was asked. 9 A. I believe that, just as I told you a 10 minute ago, there certainly still remained a threat 11 of serious harm to the officers and to Lisa Parker. 12 Q. Okay. And my question was at the time 13 that the officers, or after the officers arrived on 14 scene at Lisa Parker's residence, it's your 15 testimony that you believe it was reasonable to 16 presume that there was a serious and legitimate 17 threat to Lisa Parker's health and safety? 18 A. Yes. 19 Q. You've also classified Ken Simpson as a 20 reliable citizen informant, correct? 21 A. Yes. 22 Q. Why do you find him to be a reliable 23 citizen informant? 24 A. The information that the officers had 25 before them at the time didn't give any indication</p>	<p style="text-align: right;">Page 188</p> <p>1 talked about using -- Page 19 at the top there in 2 bold, using Spike to track Mr. Campbell was 3 consistent with generally accepted police practices, 4 reasonable method of tracking a fleeing felon. 5 Q. Okay. And that again makes the 6 presumption that a felony had occurred, correct? 7 A. Correct. Well, makes the presumption that 8 the officers had a reasonable basis to believe that 9 a felony had occurred. 10 Q. Okay. And what else is your basis for 11 that? 12 A. Nothing beyond what we discussed in the 13 last few minutes. 14 Q. Okay. What's the next opinion that you're 15 offering in this case? 16 A. The next paragraph immediately below that 17 dealing with warning, the area in bold. This was a 18 situation in which a warning would have been 19 tactically inadvisable and ineffective because there 20 was no contained and controlled perimeter around the 21 wooded area or neighborhood. And because the 22 officers did not know whether Mr. Campbell was 23 armed, and did not know his intentions other than 24 his intentions to do harm to Parker. 25 Q. Okay. And we can say at this point that</p>
<p style="text-align: right;">Page 187</p> <p>1 that he wasn't reliable. And officers are trained, 2 and we hear at the police academy that not only our 3 common sense, but courts tell us that we presume 4 that people who don't seem to have an interest in 5 the outcome are reliable. He gave them face-to-face 6 information. They knew who he was. If he had an 7 interest in Lisa Parker, that wasn't evident to 8 them. It's not evident to me now. 9 Q. Would you agree with the proposition that 10 reliable citizens or witnesses will participate in 11 the legal process? 12 A. One would hope. They don't always, 13 sometimes they're pretty reliable in reporting 14 information and then when they start to consider the 15 import of going to court, entering a world that's 16 foreign to them sometimes they become less -- less 17 forthcoming, become reticent to be involved. I 18 don't know. 19 MR. BRANNON: We can go ahead and take 20 that break now if you'd like. 21 (OFF THE RECORD) 22 BY MR. BRANNON: 23 Q. What is the next opinion in here that 24 you're offering? 25 A. Okay. I'm not sure if we had -- had we</p>	<p style="text-align: right;">Page 189</p> <p>1 Mr. Campbell had no intentions to do harm to 2 Ms. Parker, correct? 3 A. That seems to be the evidence at this 4 point. 5 Q. And his only intention was to return her 6 car keys, correct? 7 A. That seems -- 8 MR. WEISENFELDER: Objection. Go ahead. 9 A. That seems to be what the evidence would 10 point to at this point. 11 Q. Okay. Can we agree that if Officer Clark 12 had seen Campbell prior to Spike engaging him that 13 he should have issued a verbal warning to Campbell 14 prior to deploying the police K9 on him? 15 A. As a general proposition, yes. 16 Q. Okay. Meaning in reading your report 17 you've accepted Officer Clark's version of the 18 events that occurred in this case, correct? 19 A. I believe Officer Clark did not see 20 Mr. Campbell before Spike engaged Mr. Campbell. 21 Q. And you're also aware of Mr. Campbell's 22 testimony that him and Officer Clark, that their 23 eyes met. Officer Clark recognized Campbell laying 24 face down on the ground with his head up looking at 25 him, correct? That ring a bell with you?</p>

<p style="text-align: right;">Page 190</p> <p>1 A. That he recognized him by name or just saw 2 him as a person? 3 Q. Saw him as a person. 4 A. I recall that testimony, yes. 5 Q. Okay. And if, in fact, under that same 6 scenario you take Mr. Campbell's version of the 7 events as he has testified in his deposition, that a 8 verbal -- that Clark should have issued a verbal 9 warning to Campbell prior to allowing his K9 to 10 engage Campbell? 11 MR. WEISENFELDER: Objection as to form 12 in terms of allowing. Go ahead and answer the 13 question. 14 A. My answer remains the same. Injecting 15 specifics or the abstract here, and the answer is 16 generally yes, their circumstances were that it's 17 not feasible in the circumstances where it's not 18 advisable. 19 Q. Okay. And I'm talking about specifically 20 in the circumstance as purported to have occurred by 21 the Plaintiff, in this instance, Mr. Campbell. His 22 testimony was that their eyes met, that Officer 23 Clark saw or recognized him as a suspect laying face 24 down on the ground. In that instance, Officer Clark 25 should have issued verbal warnings to Officer (sic.)</p>	<p style="text-align: right;">Page 192</p> <p>1 Clark's version here in this particular factual 2 conundrum, that he didn't see Mr. Campbell. 3 Mr. Campbell may have seen him. And Mr. Campbell 4 may have the belief in his mind that Officer 5 Clark -- Officer Clark saw him. I don't know that 6 for certain. 7 Q. Let me ask a little different question 8 then along the same lines. If Officer Clark saw 9 Campbell prior to Spike engaging Campbell, should he 10 have issued warnings, verbal warnings, to Campbell? 11 A. Again, there's some factors -- generally, 12 yes, but there's some factors that would make that 13 impractical and inadvisable, distance being one of 14 them. Officer Campbell's perception -- or excuse 15 me. You did it a minute ago, did you catch that? 16 You called Mr. Campbell Officer -- 17 Q. Yeah. 18 A. Officer Clark's perception of 19 Mr. Campbell's body posture. Mr. Campbell was 20 laying down in a way that it appeared that he had a 21 weapon at the ready. I can see that the warning may 22 not have been advisable and effective. There may be 23 other circumstances. 24 Q. You would agree with me that just because 25 a track or a search for a suspect in the context of</p>
<p style="text-align: right;">Page 191</p> <p>1 Campbell prior to utilizing or deploying his police 2 dog to engage Mr. Campbell, correct? 3 A. If I can add some things to that version 4 of events then I can answer, correct. Otherwise, 5 I'd have to say no. 6 Q. I'm not going to tell you how to answer. 7 I'll let you explain your answer. 8 A. Okay. 9 Q. I've let you explain all day today, so I 10 don't think I've jumped on you too bad. 11 A. No. No. One of the circumstances that 12 would make a warning ineffective or inadvisable 13 would be the distance. If, for example, the 14 distance where -- I can see you clearly here and I 15 recognize you, so let's assume that I do. At this 16 distance I may be startled and there may not be 17 time, and it may not be effective to give a warning 18 before my dog sees you, and in effect, the dog may 19 see you right at the same moment as I've seen you. 20 So a warning isn't going to do anybody any good. I 21 don't know precisely what distance at which 22 Mr. Campbell asserts he was at when he saw Officer 23 Clark. And I don't -- just to maybe add a bit of a 24 correction to your assumption. I don't know that 25 Mr. Campbell isn't accurate. I do accept Officer</p>	<p style="text-align: right;">Page 193</p> <p>1 a police K9 occurs in an open field, that the fact 2 that it occurs in an open field as opposed to a 3 closed building does not prohibit an officer from 4 issuing verbal warnings to suspects about the use of 5 possible K9 deployment or K9 force? 6 A. I agree. 7 Q. What is the next opinion that you're 8 offering in this case? 9 A. Paragraph (e), Page 19, the force used to 10 apprehend Samuel Campbell was reasonable and 11 comported with generally accepted police practices. 12 Q. And what is your basis for that opinion? 13 A. In addition to what we've talked about 14 before, at this point I would note that the officers 15 didn't know who was out there. They didn't know 16 that this was Samuel Campbell. They didn't know 17 that there was some prior history, other than the 18 allegation from Mr. Simpson that there had been an 19 incident a couple weeks before, and other than the 20 allegation from Mr. Simpson that potentially 21 Mr. Campbell was a person who allegedly had made 22 death threats against Lisa Parker. So basically, 23 the officers had someone who fled from them, they 24 didn't know why. And he was unsearched, meaning 25 that they didn't know whether he was armed. They</p>

<p style="text-align: right;">Page 194</p> <p>1 didn't know what his intent was, and they could</p> <p>2 certainly reach some conclusions based on their</p> <p>3 perception that the banging that Mr. Simpson had</p> <p>4 reported resulted in damage to the door, and their</p> <p>5 perception the door had been kicked in.</p> <p>6 Q. Any other basis for that statement?</p> <p>7 A. No. Not -- I mean, other than what we've</p> <p>8 discussed already, no.</p> <p>9 Q. You would agree with me that the -- a</p> <p>10 prolonged bite is one example of excessive use of K9</p> <p>11 force, correct?</p> <p>12 MR. WEISENFELDER: Objection. Go ahead.</p> <p>13 A. The duration of the bite is a significant</p> <p>14 factor to take into consideration when assessing</p> <p>15 propriety of use of force from a police service dog.</p> <p>16 Q. And generally, the longer a dog is engaged</p> <p>17 in a bite, the more harm, physically, it does to the</p> <p>18 suspect, correct?</p> <p>19 MR. WEISENFELDER: Objection. Go ahead.</p> <p>20 A. As a general rule, that's true.</p> <p>21 Q. And at this particular case, are you</p> <p>22 familiar with how many stitches it took to sew up</p> <p>23 Mr. Campbell?</p> <p>24 A. I read that once. The number doesn't come</p> <p>25 to mind today.</p>	<p style="text-align: right;">Page 196</p> <p>1 number of stitches. And the most significant factor</p> <p>2 is probably, and I am not a medical guy, not by any</p> <p>3 stretch, but it's probably the length and the</p> <p>4 breadth of the wound channel, I think.</p> <p>5 Q. Okay. So you think the -- how about the</p> <p>6 coverage area for a bite, meaning if a bite occurs,</p> <p>7 or the numerosity of bites rather, let me ask you</p> <p>8 like that. Does the numerosity of bites indicate to</p> <p>9 you how long a dog is engaged on a suspect?</p> <p>10 A. No, it's a factor. It doesn't make me --</p> <p>11 I can't clock and give you a timeline from the</p> <p>12 numerosity.</p> <p>13 Q. Okay. Not to say that -- but in all</p> <p>14 likelihood, the higher the number of puncture wounds</p> <p>15 or bites from a dog's jaws on a suspect, the longer</p> <p>16 that that dog was engaged on the suspect?</p> <p>17 A. That's generally true. There are some</p> <p>18 dogs that engage in what's known -- what are called</p> <p>19 typewriter bites. And so you can see a lot of</p> <p>20 typewriter bites in a fairly brief period of time.</p> <p>21 That is a dog that engages in the undesirable, at</p> <p>22 least from the law enforcement officer's</p> <p>23 perspective, and desirable behavior of (imitating).</p> <p>24 How do you transcribe that?</p> <p>25 Q. Continuous chewing?</p>
<p style="text-align: right;">Page 195</p> <p>1 Q. 60 to 70, I believe.</p> <p>2 A. Quite a few.</p> <p>3 Q. Would that indicate to you a long duration</p> <p>4 in which the dog was engaged on a suspect?</p> <p>5 A. Not necessarily.</p> <p>6 Q. Is 60 to 70, when I told you that number</p> <p>7 you said that's quite a few. Is that more than what</p> <p>8 is normally -- what it normally takes to stitch up a</p> <p>9 suspect after a police K9 engages a suspect, in your</p> <p>10 experience?</p> <p>11 MR. WEISENFELDER: Objection, but go</p> <p>12 ahead.</p> <p>13 A. It depends. It depends on a number of</p> <p>14 factors. I'm not the really smart one in my family,</p> <p>15 there are five smarter than me who went to med</p> <p>16 school, including a couple of surgeons and four that</p> <p>17 are nurses. To look at me you don't see a scar on</p> <p>18 my face, although I've had a significant injury to</p> <p>19 my face. Part of that was that there were a lot of</p> <p>20 stitches that were made, very tiny and very</p> <p>21 carefully. So number of stitches, I have learned,</p> <p>22 can be a factor of the patience and skill and the</p> <p>23 style of a surgeon. So the number is significant,</p> <p>24 but there are extraneous factors that impact that.</p> <p>25 There are other factors that impact the</p>	<p style="text-align: right;">Page 197</p> <p>1 A. Not chewing, just tapping, in and out, in</p> <p>2 and out. And so you can see -- I've only seen it</p> <p>3 once, but you can see a lot of punctures in a very</p> <p>4 short period of time.</p> <p>5 Q. Was there any indication in your review of</p> <p>6 Spike's records that he was a typewriter biter as</p> <p>7 you've described it?</p> <p>8 A. No.</p> <p>9 Q. In your opinion that you've just offered,</p> <p>10 you again set forth the scenario of Mr. Campbell</p> <p>11 fleeing the scene to arm himself or return with</p> <p>12 confederates to mount an attack. You would agree</p> <p>13 with me that that was a remote possibility in this</p> <p>14 particular circumstance?</p> <p>15 MR. WEISENFELDER: Objection.</p> <p>16 A. I don't know that it was remote. I think</p> <p>17 that it's less likely that he was -- particularly if</p> <p>18 it was -- in a domestic situation one would tend to</p> <p>19 see fewer times that someone would return with</p> <p>20 confederates. That's more consistent with gang</p> <p>21 activity, with an area where there's a group of</p> <p>22 people to begin with that dispersed in the different</p> <p>23 areas of the neighborhood. I don't think that it's</p> <p>24 all remote though that he would go into an area and</p> <p>25 retrieve a weapon. Whether it's one he knew to be</p>

<p style="text-align: right;">Page 198</p> <p>1 located someplace, or an improvised weapon or a 2 weapon of opportunity. I don't think that it's 3 all -- at all a remote possibility for the officers 4 to consider.</p> <p>5 Q. Okay. When referring to the summoning 6 confederates here in relation to Campbell, can we 7 say that that possibility is more remote in the 8 instance of Campbell's incident, as opposed to 9 Gemperline in light of the fact that Campbell was 10 the only other possible suspect, there were no 11 groups of people?</p> <p>12 A. Perhaps. It's a little different 13 situation in that the police don't know who Campbell 14 is yet, but they know -- they have reason to believe 15 at least that he's been at that home before, based 16 on Mr. Simpson's statements. They don't know -- 17 they don't have any sense of how far away he lives. 18 They don't really know what his purpose in going 19 there was. They just know there was some kind of 20 disturbance, and based on what they see before them 21 they think there's some kind of an attempted 22 burglary, so -- different -- it's kind of apples and 23 kumquats.</p> <p>24 Q. What's the next opinion that you're 25 offering in this case?</p>	<p style="text-align: right;">Page 200</p> <p>1 correctly, you're both offering a policy opinion and 2 a handling opinion, correct?</p> <p>3 A. Well, I hadn't conceptualized it that way, 4 but I think that's fair.</p> <p>5 Q. Can you not mean it to be a handling 6 opinion?</p> <p>7 A. I didn't -- I didn't really think about it 8 in terms of a broad policy statement actually.</p> <p>9 Q. Is it a board policy statement as opposed 10 to an opinion on K9 handling?</p> <p>11 A. It's certainly a broad policy statement to 12 say that there are circumstances when a warning is 13 not tactically advisable. And one of those 14 circumstances is when you're about to track into a 15 wooded area with plenty of hiding places and 16 ancillary buildings -- excuse me, outbuildings, and 17 no defined established perimeter.</p> <p>18 Q. Then explain to me, if you would, the 19 handling portion of this opinion.</p> <p>20 A. Well, the officers were the one -- the 21 officer, the handler here, Officer Clark was the one 22 who was responsible to survey the scene to make the 23 assessment of whether a warning made sense in a 24 circumstance presented to him or not. That's a 25 decision he made as a handler, as a police officer.</p>
<p style="text-align: right;">Page 199</p> <p>1 A. If you go to Page 20, paragraph 2, about 2 halfway down.</p> <p>3 Q. Is this where it gets bold again?</p> <p>4 A. Yes. It was reasonable and consistent 5 with generally accepted police practices to use 6 Spike to track and apprehend Mr. Campbell because 7 the officers had the disadvantage of tracking 8 through dark woods with abundant hiding places. It 9 would not have been reasonable for them to provide a 10 warning announcement that would pinpoint both their 11 location and intention to apprehend Mr. Campbell.</p> <p>12 Q. And what's your basis for that opinion?</p> <p>13 A. Well, based on photographs, and again 14 looking at satellite images of the area, it appeared 15 that there was a fairly -- a fairly wide open -- I 16 don't know if I put the distance or amount of -- 17 amount of space. I didn't, but a fairly wide open 18 area with not only a significant wooded area, but 19 other residences and outbuildings and plenty of 20 hiding locations. As well as plenty of -- you have 21 outbuildings and garages, you also tend to have 22 plenty of places where there are weapons of 23 opportunity, shovels, axes, picks, pitchforks, so 24 forth.</p> <p>25 Q. And if I'm understanding this opinion</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. Any other component to the handling 2 portion of that opinion?</p> <p>3 A. I don't believe so.</p> <p>4 Q. What's the next opinion that you're 5 offering in this case?</p> <p>6 A. Page 21 at the top, Officer Clark 7 reasonably and properly limited the force applied to 8 Campbell.</p> <p>9 Q. And what's your basis for that opinion?</p> <p>10 A. As soon as the -- as soon as Mr. Campbell 11 ceased his resistance, as soon as he stopped 12 fighting, stopped struggling with Officer Anderkin 13 and Officer Campbell, and stopped kicking at Spike, 14 Officer Clark gave a release command. And as soon 15 as the release command was given, Spike released 16 from the bite.</p> <p>17 Q. And in this instance, Spike was able to 18 follow and obey a verbal release command, correct?</p> <p>19 A. He was.</p> <p>20 Q. So this wasn't an incident where the dog 21 kept engaging in a bite because he wouldn't respond 22 to a command? Officer Clark had complete control 23 over how long Spike continued to engage the suspect 24 based upon the response of this dog, correct?</p> <p>25 A. I think the facts show that Officer Clark</p>

<p style="text-align: right;">Page 202</p> <p>1 had control of the dog with respect to giving the</p> <p>2 dog a release command and having the dog instantly</p> <p>3 obey. I don't --</p> <p>4 Q. Meaning at any time Officer Clark, upon</p> <p>5 his own choosing, could have shortened the duration</p> <p>6 of the bite by giving a release command earlier</p> <p>7 after the dog had engaged, correct?</p> <p>8 A. I believe that to be possible based on the</p> <p>9 fact that the dog obeyed promptly.</p> <p>10 Q. In fact, probably since the dog obeyed</p> <p>11 promptly, correct?</p> <p>12 A. That would be fair.</p> <p>13 Q. So there's no question in this case that</p> <p>14 Officer Clark was applying the use of force to</p> <p>15 Campbell, correct?</p> <p>16 MR. WEISENFELDER: Objection. Go ahead.</p> <p>17 A. I'm not -- you mean that Officer Clark</p> <p>18 wasn't touching Mr. Campbell?</p> <p>19 Q. Meaning Officer Clark, as the handler, was</p> <p>20 in control of his K9. He was able to, as we</p> <p>21 discussed earlier when we were talking about</p> <p>22 handlers, and let me put it in this context. That</p> <p>23 you recall our prior conversation that if the</p> <p>24 handler is not in control, then the handler is not</p> <p>25 the one making the use of force decisions, correct?</p>	<p style="text-align: right;">Page 204</p> <p>1 be. There were other factors with respect to the</p> <p>2 use of force.</p> <p>3 Q. Any other basis for your opinion that we</p> <p>4 haven't discussed yet?</p> <p>5 A. Not other than what we mentioned here.</p> <p>6 Q. What is the next opinion that you're</p> <p>7 offering in this case?</p> <p>8 A. Page 21, letter F, the training provided</p> <p>9 for Spike's maintenance, generally accepted police</p> <p>10 service dog training standards.</p> <p>11 Q. Okay. And what is your basis for that</p> <p>12 statement?</p> <p>13 A. Both testimony from Officer Clark that he</p> <p>14 did regular maintenance training, as well as the</p> <p>15 training records that I have reviewed in this case.</p> <p>16 And the fact that at least prior to these occasions,</p> <p>17 albeit there had been a gap, at least prior to these</p> <p>18 occasions, that Spike and Officer Clark had been</p> <p>19 able to perform at a sufficient level of proficiency</p> <p>20 to achieve police service dog team certification</p> <p>21 from the -- I don't know that I even remember what</p> <p>22 OPOTA stands for, Ohio Peace Officer Training</p> <p>23 Commission.</p> <p>24 Q. So, your basis for this statement, if I'm</p> <p>25 understanding you correctly, is that Spike had met</p>
<p style="text-align: right;">Page 203</p> <p>1 A. Correct.</p> <p>2 Q. And in this case, Officer Clark was in</p> <p>3 control of his K9, correct?</p> <p>4 A. Yes. I understood your question to</p> <p>5 suggest that Officer Clark never touched</p> <p>6 Mr. Campbell.</p> <p>7 Q. I don't think anybody is alleging that</p> <p>8 Officer Clark ever touched Mr. Campbell.</p> <p>9 A. Okay. I may have misunderstood where you</p> <p>10 were going. Okay.</p> <p>11 Q. My question is, and I wanted to see if you</p> <p>12 agreed with me. That it was not the dog that was</p> <p>13 determining the use of force in this instance, but</p> <p>14 it was Officer -- I said Campbell -- Officer Clark</p> <p>15 in this instance that was determining how much force</p> <p>16 to exert on Mr. Campbell, knowing that the dog was</p> <p>17 properly responding to verbal commands?</p> <p>18 A. Officer Clark certainly was the one here</p> <p>19 who made the determination of when to give the</p> <p>20 release command, and Spike complied with that</p> <p>21 release command.</p> <p>22 Q. And based upon that, it's fair to say that</p> <p>23 Officer Clark was in control of the use of force</p> <p>24 being exerted against Mr. Campbell, correct?</p> <p>25 A. He was as in control as a handler could</p>	<p style="text-align: right;">Page 205</p> <p>1 the minimum standards for OPOTA certification in the</p> <p>2 State of Ohio?</p> <p>3 A. He had met those minimum certification</p> <p>4 standards. He had also been certified by a private</p> <p>5 certification group, I believe North American Police</p> <p>6 Working Dog Association. And also I'm relying on</p> <p>7 the testimony of Officer Clark, as well as training</p> <p>8 records.</p> <p>9 Q. Anything else that you're relying upon?</p> <p>10 A. No.</p> <p>11 Q. Do you agree that Officer Clark admitted</p> <p>12 during his deposition that Spike was not current in</p> <p>13 his training at the times the Campbell and</p> <p>14 Gemperline bites occurred?</p> <p>15 A. I agree that he talked about -- he did,</p> <p>16 yes, talk about some weeks, and I don't remember</p> <p>17 exactly what the time frame was, but he did talk</p> <p>18 about weeks where he had not accomplished his</p> <p>19 regular maintenance training period.</p> <p>20 Q. And just so we're clear on this, is your</p> <p>21 opinion that both the maintenance training</p> <p>22 requirements were met and the OPOTA certification</p> <p>23 requirements were met, or just the OPOTA</p> <p>24 certification requirements?</p> <p>25 A. The OPOTA certification requirements, and</p>

<p style="text-align: right;">Page 206</p> <p>1 generally he met the in-service training 2 requirements, but they clearly are, as shown in the 3 record, and the training records, there are some 4 lapses. 5 Q. And I think you indicated that those 6 lapses caused you some concern as to whether or not 7 this dog was performing to professionally acceptable 8 levels -- 9 MR. WEISENFELDER: Objection. 10 Q. -- correct? 11 MR. WEISENFELDER: Objection. Go ahead. 12 A. I didn't -- I did not say that. It caused 13 me concern. 14 Q. Well, what did it cause you concern about? 15 A. It caused me concern that Officer Clark 16 may not have been adequately and accurately 17 recording the full scope of the in-service training 18 that he was doing, the maintenance training that he 19 was doing on a regular basis. And as we discussed 20 earlier this morning, one factor that a supervisor 21 should be looking at is whether a handler is making 22 statements, such as I need more time to be made 23 available to me to do training. 24 Q. And that's a factor that weighs against or 25 that causes some concern, at least from a</p>	<p style="text-align: right;">Page 208</p> <p>1 context that, you know, it's an entirely different 2 situation than as you've described these border dogs 3 where maintenance training is going to be necessary 4 because they aren't daily in and out engaging in 5 dual purpose work? 6 A. I think that's a strong consideration, but 7 it also doesn't -- it doesn't take into 8 consideration one other variable, and that is the 9 dedication of the particular handler and the team. 10 You know, you can have a handler that's very 11 motivated. Handlers, like other people, other 12 police officers, their motivations may rise and 13 fall. You can have a handler that's very motivated, 14 who is getting that dog out a couple hours every 15 night, or an hour every night to do training with a 16 handler, potentially training with another officer, 17 who is doing a great job of keeping the training up, 18 but is not doing such a great job of documenting and 19 recording the training. 20 Q. Officer Clark or anybody else never 21 testified that there was training that he did that 22 he didn't document, correct? 23 MR. WEISENFELDER: Objection. 24 Q. There's no indication of that in this set 25 of facts that you've been given, or the case</p>
<p style="text-align: right;">Page 207</p> <p>1 supervisory position, that that dog may not be 2 operating to professional standards, correct? 3 MR. WEISENFELDER: Objection. 4 A. It's one of the factors a supervisor 5 should look at. Certainly, you know, you can have, 6 as I gave the example of the border patrol dogs, you 7 can have dogs that aren't getting four hours of 8 formal training in a week, but are still performing 9 quite -- quite well. 10 Q. And that's because those dogs are actively 11 engaging in the work that they do, correct? 12 A. That's one of the reasons. 13 Q. Now, this particular K9 unit, in the 14 context of Springboro, Ohio, which is a relatively 15 affluent community with low crime, would you agree 16 with that characterization of Springboro as you've 17 read it in the depositions? 18 A. I've seen that written in several places. 19 Q. Okay. You would have -- 20 A. I've never been there. I don't know 21 anything about the town. 22 Q. You wouldn't dispute those demographics, 23 though? 24 A. I have no reason to. 25 Q. And you would agree with me in that</p>	<p style="text-align: right;">Page 209</p> <p>1 materials that you've reviewed? 2 A. I don't recall that. 3 Q. You don't recall that or you would agree 4 with me that that scenario that you've listed where 5 he's doing training but he's just not recording it 6 is something that's at play in this case? 7 A. I'm sorry, I don't remember. I don't 8 agree with you. I have in my mind the notion that 9 Officer Clark was doing some maintenance training 10 that I didn't see reflected in the training records, 11 but I'm not -- I'm not certain of what it is that 12 pops that into my mind. 13 Q. Would you agree with me that the training 14 records completed by Officer Clark in this instance 15 could have been done better, meaning more 16 information, more detail about what he was doing 17 with this particular dog? 18 A. Yes. I think there's a time they got 19 better. In fact, there was a time they shifted to a 20 computer program. It made accurate recordkeeping a 21 lot easier. Cops like easy. 22 Q. Were you able to determine from your 23 review of the training records at what point Spike 24 was transitioned from a bark-and-hold dog to a 25 bite-and-hold dog?</p>

<p style="text-align: right;">Page 210</p> <p>1 A. No.</p> <p>2 Q. You just believe that he was eventually</p> <p>3 trained or transformed into a bite-and-hold dog</p> <p>4 based upon the results you were reviewing in the</p> <p>5 deployment reports, correct?</p> <p>6 A. Well, I think what I told you earlier and</p> <p>7 what I say now is the end of the searching behavior,</p> <p>8 the circumstances I reviewed he performed as I would</p> <p>9 expect a bite-and-hold dog to perform.</p> <p>10 Q. What is the next opinion that you're</p> <p>11 offering?</p> <p>12 A. Page 22.</p> <p>13 Q. Okay. And what is that opinion?</p> <p>14 A. At the top of the page, the Springboro</p> <p>15 Police Department properly supervised Officer Clark</p> <p>16 in the incidents involving Chelsie Gemperline and</p> <p>17 Samuel Campbell, and just continuing that paragraph.</p> <p>18 The policy and practice is consistent with generally</p> <p>19 accepted police practices providing an adequate</p> <p>20 supervisory review for use of force for</p> <p>21 administrative purposes.</p> <p>22 Q. Who do you believe at the Springboro</p> <p>23 Police Department -- or strike that. Tell me the</p> <p>24 basis of that opinion.</p> <p>25 A. Each time -- and when we're talking about</p>	<p style="text-align: right;">Page 212</p> <p>1 agency's policies, practices with the law, and</p> <p>2 essentially whether it was an appropriate use of</p> <p>3 force.</p> <p>4 Q. Okay. So, if I'm understanding your</p> <p>5 statement correctly, you're stating that the</p> <p>6 Springboro Police Department properly supervised</p> <p>7 Officer Clark in the incidents involving Chelsie</p> <p>8 Gemperline and Samuel Campbell because a report was</p> <p>9 generated after the incidents and went up the chain</p> <p>10 of command?</p> <p>11 A. Generated and reviewed, and that's</p> <p>12 indicative -- and the policy requires that. That's</p> <p>13 indicative that the agency is supervising the use of</p> <p>14 force generally within the agency.</p> <p>15 Q. Okay. And this is the agency supervising</p> <p>16 the use of force. You're not opining that the</p> <p>17 sergeants, the lieutenants and Kruitoff in this</p> <p>18 case, regarding their supervision of Officer Clark,</p> <p>19 other than the reports that you mentioned, correct?</p> <p>20 A. Well they're the ones reviewing the</p> <p>21 reports. I mean, they're human, if you want to say</p> <p>22 agency that they're the folks carrying out the duty,</p> <p>23 but if you're talking about supervision beyond these</p> <p>24 incidents, I'm not giving an opinion, no.</p> <p>25 Q. Okay. And that pertains to his not</p>
<p style="text-align: right;">Page 211</p> <p>1 use of force here today, I'm assuming that you want</p> <p>2 me only to talk about the use of force involving the</p> <p>3 police service dog Spike.</p> <p>4 Q. I want you to talk about what you're</p> <p>5 opining about --</p> <p>6 A. Okay. And that's it.</p> <p>7 Q. -- anything that you're offering an</p> <p>8 opinion on.</p> <p>9 A. Right. And that's it. I'm not offering</p> <p>10 an opinion about batons or tasers or anything else.</p> <p>11 Each time there was a bite that occurred in the</p> <p>12 course of police service by police service dog</p> <p>13 Spike, there was a use of force report that was</p> <p>14 completed that was reviewed by a supervisor and</p> <p>15 ultimately was part of -- became part of the annual</p> <p>16 public report. The practice -- well, I'll stop</p> <p>17 there. That's the basis for my opinion, was that</p> <p>18 there was a use of force reporting system in place</p> <p>19 that apparently was carried out in the case of each</p> <p>20 bite.</p> <p>21 Q. Okay. Any other basis for that opinion?</p> <p>22 A. The way the use of force report was</p> <p>23 handled, that is that it went up the chain of</p> <p>24 command and was reviewed at multiple levels for</p> <p>25 whether the use of force was consistent with the</p>	<p style="text-align: right;">Page 213</p> <p>1 offering any opinion regarding his supervision and</p> <p>2 the field supervision for training or anything of</p> <p>3 that nature, correct?</p> <p>4 A. I'm not.</p> <p>5 Q. Okay. Any other opinions that you're</p> <p>6 offering?</p> <p>7 A. I believe you've covered it.</p> <p>8 MR. BRANNON: Give me a minute. I'm</p> <p>9 pretty close to done.</p> <p>10 (OFF THE RECORD)</p> <p>11 BY MR. BRANNON:</p> <p>12 Q. In your review of the records pertaining</p> <p>13 to Spike, the dog, did you find him to be</p> <p>14 particularly weak or strong in any certain areas?</p> <p>15 MR. WEISENFELDER: Objection. Go ahead.</p> <p>16 A. I'm not sure what you mean by weak or</p> <p>17 strong.</p> <p>18 Q. Meaning was he really good at drug</p> <p>19 detection as opposed to patrol work? Was he an --</p> <p>20 you know, an aggressive dog when it came to barking</p> <p>21 at suspects, was he --</p> <p>22 A. I don't --</p> <p>23 Q. Did you form any --</p> <p>24 A. I didn't look at the -- I didn't look at</p> <p>25 the records with an intent to opine on that, so, you</p>

<p style="text-align: right;">Page 214</p> <p>1 know, I guess I could go back, but I -- it's not 2 something that strikes me here as I sit today that 3 he was weak and strong in any particular area. 4 Q. Okay. You're not offering any opinions 5 on -- 6 A. I'm not. I suppose I did in one sense 7 when I told you I didn't think that he made the 8 mistake of typewriter bites, but, you know, other 9 than that, I really hadn't thought about it. 10 Q. As far as the K9 usage of Spike, you keep 11 referencing these border patrol dogs. From your 12 review of the records, was there any indication that 13 Spike was getting so much use in the field that it 14 wasn't necessary for him to engage in maintenance 15 training? 16 A. No. 17 Q. So that's to state that in all likelihood 18 Spike should have been engaging in maintenance 19 training, in addition to his OPOTA certification 20 training, correct? 21 A. Yes. 22 Q. For maintenance training to occur on a 23 regular basis, I think that you said was it eight 24 hours a week, sixteen hours a week? 25 A. The generally accepted best practice</p>	<p style="text-align: right;">Page 216</p> <p>1 Clark, Spike, is it fair to say that anybody from 2 the sergeant or a lieutenant or otherwise was void 3 of any involvement with the basic and in-service 4 training requirements for Spike in the City of 5 Springboro Police Department? 6 A. I'm sorry. I'm not quite sure I 7 understand what you're asking me. 8 Q. I'm asking you if, as it pertains to the 9 basic in-service training requirements regarding the 10 Clark/Spike K9 team, if the sergeants to lieutenant 11 operations commanders, none of them were involved 12 with any -- any of that in this particular instance, 13 correct? 14 A. Based on what I've seen, I believe that to 15 be the case. 16 Q. Okay. And in the case of Mr. Campbell, 17 Officer Clark never got approval from any supervisor 18 prior to deploying K9 Spike, correct? 19 A. That's correct. 20 Q. And that's against the policy that 21 Springboro had in place at the time, correct? 22 A. You're referring to the policy -- 23 Q. That may or may not have been adopted. 24 A. -- that may or may not have been 25 officially adopted?</p>
<p style="text-align: right;">Page 215</p> <p>1 number that I believe to be appropriate is sixteen 2 hours a month. And that's the number one would hear 3 most often endorsed by the National K9 Association, 4 and regional, with which I'm familiar for that 5 matter. 6 Q. And how is that sixteen hours a month 7 generally done? Is it, you know, you spend four 8 hours a week for four weeks? 9 A. Sure. And every -- you know, every month 10 is different. Some months have five weeks, some 11 months have four, and recognizing that special 12 events and just vacation and other incidents may 13 throw in an off week. I think that it's best, and I 14 believe that most folks will tell you that it's best 15 to try and accomplish that in blocks of four hours a 16 week. I'm aware of agencies that try and do it 17 differently. They try and do it two hours, a couple 18 a week, two hours twice a week. 19 In California it's not uncommon to see an 20 agency that will do one eight-hour training day 21 every two to three weeks. It just kind of depends 22 on what works for the agency and what works for the 23 trainers involved. 24 Q. In your review of the materials pertaining 25 to the K9 team of Detective Clark -- or Officer</p>	<p style="text-align: right;">Page 217</p> <p>1 Q. Yeah. 2 A. One could certainly interpret it that 3 way. 4 MR. BRANNON: I don't have anything else 5 for you. I'll let you go catch that plane. 6 (Witness excused) 7 (The deposition ended at approximately 3:50 p.m.) 8 9 10 11 12 13 Kenneth R. Wallentine Date 14 15 16 17 18 19 20 21 22 23 24 25</p>

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STATE OF OHIO)
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I, Tina M. Barlow, Notary Public for the
State of Ohio, do hereby certify:

That the witness named in the deposition, prior
to being examined, was by me, first duly sworn;

That said deposition was taken before me at the
time and place therein set forth and was taken down
by me in shorthand and thereafter transcribed into
typewriting under my direction and supervision;

That said deposition is a true record of the
testimony given by the witness and of all objections
made at the time of the examination.

I further certify that I am neither counsel for
nor related to any party to said action, nor in any
way interested in the outcome thereof.

IN WITNESS WHEREOF I have subscribed my name
and affixed my seal this 23rd day of September,
2013.

TINA M. BARLOW
Notary Public
State at Large
My Commission expires: 5/16/14